FEDERAL OVERREACH AND COMMON CORE

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Introduction

This report provides the historical background and interpretive analysis needed to understand controversies surrounding Common Core and its associated tests.

In this report, which is a revised and expanded version of my expert report for *Jindal v. United States Department of Education* et al., No. 14-CV-534 (M.D. La), I will show:

- That longstanding federal statutes contain prohibitions on the federal government in general — and the U.S Department of Education in particular — from directing or controlling curriculum;
- That Common Core in combination with its associated tests are components of curriculum and put the country on the path to a national curriculum;
- That, notwithstanding the role of the state officials and others in the creation of Common Core and its tests, the federal government and its Department of Education got the states to adhere to the Common Core and its associate tests and are enforcing against the states policies aimed at keeping in place these national standards and national tests (or their federally-approved equivalents); and
- That, although the Common Core and its tests are defended as needed for school-improvement purposes, there is an alternative approach to school improvement that is consistent with the Constitution and federal statutes.

The main argument of Gov. Bobby Jindal – as presented by his lead attorney Jimmy Faircloth — was that three federal statutes prohibit the Department of Education from exercising "any" direction, supervision, or control over curriculum or the program of instruction in the states.[1] Yet the Department of Education funded the national assessments and gave privileged status to the Common Core curriculum standards and strongly incentivized states to adhere to the Common Core.

The Common Core and its tests are part of an aligned K-12 system in which subject-matter to be learned (curriculum-content standards); teaching techniques; lesson plans; textbooks and the like; sequencing of subject-matter; and assessment are all in line with one another. The Education Department requires that those curriculum components be aligned and enforces compliance.

President Barack Obama and Education Secretary Arne Duncan have praised that alignment and expect great improvements in student learning because of it. For example, Duncan has said that an assessment system and curriculum "can only be as good as" the curriculum-content standards to which the assessments and curriculum are "pegged." He said that he believed the "impact" "in the classroom" of the federally-funded Common Core assessments will be "dramatic." He added that the federally-funded assessments will help "drive the development" of curriculum. He even said that he looked forward to national assessments given at intervals throughout the year – through-course assessments that would structure the scope and sequence of teaching.[2]

The Education Department's requirement of alignment itself means that all components are – in Duncan's words -- "pegged" to one another. They overlap almost entirely and strongly influence each other. They are supposed to coincide in substance and re-enforce one another in practice. The Common-Core aligned assessments are high-stakes and required of all students; hence, they drive teaching toward a nationwide uniform objective (the specified curriculum content).

The Education Department set deadlines for those who wrote the Common Core standards, in order to meet its own deadlines for the $4.35-billion Race to the Top program. The department established and imposed a technical panel to monitor the Common Core-aligned assessments.[3]

The Common Core itself often dictates when and how to teach various topics. It says to teach Algebra I in ninth grade (although high-performing countries teach it in eighth). It dictates how proof of the congruence of triangles should be taught in the classroom and requires that a method be used ("rigid motions") which has never been taught successfully in K-12 education in America. The Common Core English standards dictate the proportions of informational text and literary text that students will read in different grades. The federally-funded assessments will test whether these topics have been learned in this prescribed way.

The Common Core imposes uniformity of subject-matter content across the states – content that is so much the same that any differences are insignificant (and that uniformity is policed through tests) — and the Common Core excludes content or alternative teaching methods (as in the case of congruent triangles).

How did the attorneys for the federal government and its witnesses respond? The leading expert witness for the federal government said that there are a "plethora" of definitions of "curriculum," so Congressional statutory prohibitions on interference with curriculum are meaningless and the Department of Education is not constrained by such a prohibition. If there had to be a definition, he wanted to go with the usage of bureaucrats in state capitals, many of whom were federally-funded compliance officers, rather than following the usage of founding and influential figures in the field of curriculum studies.[4]

The federal government's leading expert witness claimed that "alignment" (which is required by the federal government's own rules and regulations) is not a technical term and has no real definition or purpose. In the opinion of the federal government's leading expert witness, "alignment" is operationally meaningless.[5] Therefore the Education Department requiring alignment with federally-funded assessments cannot be statutorily-prohibited interference with curriculum.

Gov. Jindal's attorneys replied that there is a whole academic field of alignment studies with recognized scholars and disciplinary studies.[6] The federal government itself, the Jindal side pointed out, has operationalized alignment by publishing pages and pages of descriptions of how and how not to do it.[7]

The federal government side took great delight in pointing out, accurately, that Gov. Jindal had adhered several times to the Common Core: through the Race to the Top grant program and by receiving a waiver from No Child Left Behind penalties. The federal government also claimed that it wasn't as difficult as the Jindal side said it was to get out of the Common Core and its assessments. (Actually, getting out can be quite a challenge.)

In addition to the problems with Race to the Top, the Department of Education also issued waivers that relieved states of penalties for not meeting No Child Left Behind Act targets for student achievement and in other areas. But these waivers also imposed conditions on the states, including conditions requiring curriculum-content standards that met federal specifications. Derek W. Black, who specializes in education and civil rights law, distinguishes the NCLB waivers from what had come before:

> First, the waiver policy conditions were no longer part of a voluntary grant program or negotiated political process. They were unilateral executive conditions that a state must accept or become subject to sanctions. Second, the waiver conditions supplanted existing education policies. Granting a state a waiver entailed eliminating a state's responsibility in regard to NCLB's standardized testing goals, demographic group accountability, teacher certification requirements, and responsibility for correcting or restructuring schools that failed to meet the law's requirements. In place of these legislative requirements were the administration's policies, which also resulted in a shift in decision-making authority in regard to academic standards and teachers. NCLB had left those issues to the discretion of states, whereas the waivers had exerted federal executive control in those areas.[8]

Black went on to say in a law review article:

> The [U.S. Secretary of Education] exercised the equivalent of lawmaking power when he imposed wide-reaching conditions with no statutory guidance from Congress. … The Secretary lacks explicit authority to condition waivers. At best, NCLB implies authority to condition waivers, but implied conditions would be limited to the scope of NCLB itself. The waiver conditions the Secretary imposed go well beyond the scope of NCLB. For instance, the text of NCLB specifically prohibits the Secretary from requiring "specific instructional content, academic achievement standards and assessments, [or curriculum]." In short, NCLB waivers are void on multiple grounds.[9]

If the waiver process itself was flawed and illegal, and if both the Race to the Top and the waiver conditions violated the prohibitions in the three federal statutes, the details of getting in or out don't matter that much -- since both are Education Department efforts that are prohibited.

(The Race to the Top was a competitive grant program that was part of the 2009 federal stimulus package.[10] It provided money if states fulfilled certain conditions such as adopting a multi-state set of standards like Common Core. Race to the Top also included $360 million in federal money to create assessments aligned to these new multi-state curriculum-content standards.)

In essence, the case of *Jindal v. U.S. Department of Education* was about who has sovereignty over public education – the federal government or the states? Does the federal government have authority to exercise control over what goes on in the classroom? Has the Education Department — by backing Common Core and its assessments — violated Congress's repeated prohibition on exercising "any" direction or control over classroom academics?

Common Core and its assessments have mightily influenced what goes on in the classroom. The extent of this influence rises to the level of direction and control of curriculum and the course of instruction.

What is Curriculum? What is Its Relationship to Standards and Testing?

Ralph W. Tyler was a pioneer figure in the field of curriculum studies. He was widely recognized as "the dean of the curriculum theorists."[11] His 1949 authoritative book *Basic Principles of Curriculum and Instruction* has been hugely influential, is still in print today, and is still assigned to students in schools of education.[12]

On page one of his book , Tyler provides a list of four questions which "must be answered" – questions that Tyler believed a curriculum specialist ought to deal with in constructing curriculum at any educational level. Here are Tyler's curriculum-building questions (these have since come to be known as the *Tyler Rationale* or the *Tyler Syllabus*):

1. What educational purposes should the school seek to attain?
2. What educational experiences can be provided that are likely to attain these purposes?
3. How can these educational experiences be organized?
4. How can we determine whether these purposes are being attained?[13]

Thus, for Tyler, building an effective curriculum requires addressing (in modern jargon): [question 1] content standards; [question 2] instructional materials, pedagogy (teaching methods), and lesson plans; [question 3] instructional scope and sequence; and [question 4] assessments (tests and other methods of evaluation).

Tyler had a broad definition of curriculum that includes content standards and assessments. He used the word "evaluation" as a technical term to indicate the process of aligning measurement and testing with educational objectives. Tyler writes an entire chapter on different kinds of assessments and issues like the reliability and validity of assessments).[14] In addition, during the 1930s and early 1940s, Tyler was research

director for evaluation of the Eight-Year Study of Secondary Education, where he looked at different forms of evaluation (including testing and other forms of assessment) as part of an analysis of an experimental high-school curriculum.[15]

Of course, others use narrower definitions of "curriculum" than that given by Tyler. They use the term to encompass fewer than all of the four components that Tyler sets forth. There are many people who write about curriculum, and one should be careful to note which of the components they include when they write about the topic.

In addition to Tyler's *Basic Principles*, another work has been extensively used by curriculum designers: Bloom's *Taxonomy*.[16] It has been described as "one of the most influential educational monographs" of the time period since its publication in 1956.[17] Whatever its merits and deficiencies, the *Taxonomy* has had a major impact on curriculum design, creation of test items, and teaching of reasoning skills. As Robert McClure writes, "scarcely a curriculum committee at work in a local school district can be found" that does not include Bloom's *Taxonomy* in its curriculum work.[18] The *Taxonomy* is a schema for categorizing curriculum objectives and addressing problems of subject-matter, teaching methods, and assessment. It has six levels of cognitive processes: knowledge, comprehension, application, analysis, synthesis, and evaluation. "Evaluation," that is, assessment, is one of its major categories and this category specifically includes testing and other "judgments based on external criteria."

For clarity, Stanford Professor Emeritus Michael W. Kirst, for example, uses specialized terminology for discussing curriculum. Curriculum in the broad sense Kirst calls "macrocurriculum." Curriculum in the narrow sense, Kirst (who currently holds and also in the 1970s held the post of president of the California State Board of Education) calls "microcurriculum." "Macrocurriculum," as used by Kirst, includes standards and assessments.[19] Someone might also easily include curriculum frameworks, for example, in the broad idea of macrocurriculum.

Most importantly, the Elementary and Secondary Education Act has since the days of the Clinton administration been based on the concept of an "aligned educational system," in which standards, curriculum (in the narrow sense), and assessments must be in alignment. They mirror and match each other and cannot be disentangled. "Systemic reform" along these lines was proposed in a paper by Jennifer O'Day of the American Institutes for Research and Clinton education official Marshall Smith.[20]

O'Day and Smith's proposal urged alignment of curriculum-content standards, tests, curriculum materials, teacher training, and in-service professional development. Smith had served as chief of staff to the first U.S. secretary of education, Shirley Hufstedler, in the Carter administration, was deputy secretary of education during the Clinton years, and was later a high official and adviser in the Department of Education during the Obama administration.[21]

An important Department of Education guidance document makes this role of systematic reform in recent versions of ESEA clear:

> Alignment is the match between the expectations of student learning described in a State's academic standards and a State's assessments. In an aligned assessment system, State academic content standards comprise the content of the assessment. A curriculum aligned with the State's standards is necessary for students to achieve and demonstrate proficiency on a State's tests.[22]

Thus, curriculum (in a narrow sense) is intended to be governed by, and aligned to, the standards–that is their clear purpose. Hence, one must acknowledge that standards control the curriculum. For example, the Common Core calls for the first algebra course, typically Algebra 1, to be taught in grade 9. This is a radical change for many states such as California or Massachusetts that spent the last decade

successfully attempting to steer a larger fraction of students into taking algebra by grade 8. It is also against the recommendations of the 2008 presidential National Mathematics Advisory Panel. Yet Common Core's placement of the first algebra course will surely affect the curriculum offered in the middle schools across the nation by limiting algebra courses there. Clearly, he (or she) who controls the standards controls the curriculum.

As Peter W. Wood writes, the Common Core standards are "finely detailed, grade-by-grade specifications" for "what should be taught," "when it should be taught," and all too often, "how it should be taught."[23] Although many defenders of the Common Core describe standards as the "what," we nonetheless have numerous examples (including the Algebra I example above) where the Common Core is prescriptive as to the "when" and the "how."[24]

Content standards also go by various names that reflect their intimate intertwining with curriculum in the narrow sense and inclusion in curriculum in the broad sense—including academic content standards, disciplinary content standards, and, naturally enough, curriculum-content standards (their official name in several states, for example, New Jersey and North Dakota). Education-policy analysts also speak of "standards-based curriculum," which reflects the fact that standards can be thought of as the basis of curriculum in its narrow sense. Thus, since standards govern curriculum, any law that forbids federal direction or control of curriculum also forbids federal favoritism toward a particular set of curriculum-content standards.

The relationship between assessments and curriculum in its narrow sense is likewise intimate. In terms of design and in terms of state and local officials complying with the level above them, the curriculum (in the narrow sense) is based on the standards. But in terms of incentives that drive curriculum, tests are in the driver's seat, and tests police compliance with the standards. Indeed, assessment is included by Tyler and Bloom as part of curriculum and by Kirst in macrocurriculum. In the end, teachers will be preparing students to take the accountability tests. (Teachers themselves may be evaluated to some extent on how well their students do on these tests.) And testmakers are going to test what is on the standards – they aren't going to test lesson plans on topics not in the standards. Indeed, in order for a test to have content validity, it has to be aligned with the subject-matter taught and, in some cases, with the teaching methods. There is a concept in education policy that comes in several similar forms: "what gets tested gets taught," "what you test is what you get," "assessment drives instruction, "assessment drives curriculum."[25] Thus, since assessments are widely recognized as driving curriculum, any law that forbids federal establishment, endorsement, or control of curriculum, forbids federal funding of assessments or favoritism toward particular assessments. James Popham and others say:

> [I]f the assessment devices are criterion-referenced tests that have been deliberately constructed to illuminate instructional decision making and if there are significant consequences tied to pupils' test performances, the testing progam will drive the instructional program.
>
> The competences that are covered by the test will become curricular magnets that draw instruction toward them.[26]

The argument of the Jindal side was grounded in concepts and understandings that prevail in the field of K-12 education policy. Education historian and analyst Diane Ravitch wrote a glossary *Ed Speak*, published in 2007 by the Association for Supervision and Curriculum Development.[27] To summarize the argument of the plaintiffs — using Ravitch's glossary — the plaintiffs argue that we have an aligned system of public education in America, based on the ideas of "systemic school reform" (in which "all aspects of the school system—including standards, curriculum, instruction, assessment, and staff training … are aligned").[28]

Curriculum-content standards "describe what students should know and be able to do in core

academic subjects. … The purpose of content standards is to create a common curriculum, so that students who move from school to school or from district to district have access to the same curriculum and so that teachers know what they are supposed to teach."[29] In the case of Common Core, these standards have been written outside the federal government, but to meet a federally-set deadline.

To police adherence to these standards, students are tested on the content standards with federally-funded tests for all students or tests aligned to other federally approved standards. ("An assessment may be part of a system for testing and evaluating individual students, groups of students, schools, or districts."[30]) The results on the tests are "high stakes" (that is, the test results have "serious consequences for those who score low and/or some kind of reward for those who score high") for students, teachers, schools, districts, and, perhaps, other person or entities.[31] ("Most accountability programs have been based on state curriculum standards and state tests derived from those standards."[32])

In many cases, the Common Core standards set forth not just what to teach, but how. But to the extent a given curriculum-content standard is unconstrained and indeterminate, teachers will teach to the test ("when those standards are vague or nonexistent, teachers study the assessment itself, which has an implicit curriculum").[33]

In an aligned educational system, standards, tests, and curriculum (in a narrow sense) match each other. ("The goal of alignment is to ensure that all the parts of the education system are working in concert." In such a system, the process of alignment "coordinate[s] standards, teacher education, curriculum, instruction, testing, and accountability. In an aligned education system, the curriculum describes what students are expected to know and be able to do; teacher education programs produce teachers who know how to teach what students are expected to learn; teachers base their daily lessons on the course curriculum; textbooks teach what students are expected to learn; tests are based on the curriculum; and accountability systems report whether students are meeting the standards.")[34]

Under No Child Left Behind (the 2001 iteration of the Elementary and Secondary Education Act), states receiving Title I money – that is all states – had to go through a review of alignment of their standards and assessment and of the process for creating their standards and assessments.

With Common Core, the federal government was now promoting a single national set of curriculum-content standards (through its Race to the Top competitive grant program and through NCLB waivers). (If you didn't have Common Core you needed to have standards whose contents were federally approved after a federally-created process.) The federal government was funding national high-stakes tests for all students. (States not using one of the federally-funded consortia tests would still have to show test alignment with the Common Core or a federally approved set of alternative standards). These activities, in an aligned educational system, necessarily direct and control curriculum (in the narrow sense – or in the broad sense).

What is the Historical Background of the Prohibitions Saying that the Federal Government in General—and the Education Department in Particular – Must Not Control Curriculum?

National Defense Education Act (1958)

After World War II came the Cold War between the Communist countries and the United States and its allies. On Oct. 4, 1957, the Soviet Union launched Sputnik, the first satellite to orbit the earth, this achievement by a Communist country was what historian and renowned textbook writer Thomas A. Bailey called "a psychological Pearl

Harbor" for U.S. officials and the American public.[35]

Sputnik led Congress to pass the 1958 National Defense Education Act, which funded programs in math, science, and Cold-War-related foreign-languages.[36] But such activity did not go unchallenged. Some conservatives who were strict constructionists complained that when the federal government used conditional grants-in-aid to promote physics and like subjects, the federal authorities were determining the make-up and content of curriculum. They argued that the control of curriculum content was the most complete, most-thoroughgoing sort of control of education and hence the least desirable sort of control for the federal government to have.[37]

Included in the statute was the following prohibitive language:

> Nothing in this act shall be construed to authorize any agency or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system.[38]

Yet critics said the federally-sponsored reform was coercive because adoption of these curricula met conditions for eligibility for other federal grants and contracts, and districts sometimes adopted them, in Jon Schaffarzick's words, "for fear of losing other federal support." Making adoption of a national curriculum, in effect, a necessity to compete for federal grants was a strategy later used by the Obama administration.[39]

The middle school social-studies curriculum produced a hostile reaction in Congress, in part because NSF's efforts to create, support, and publicize this curriculum were seen as crowding out noncompliant private publishers and "imposing a uniform social studies curriculum," across the country with federal funds.[40] Newspaper columnist James J. Kilpatrick wrote that "once the notion is accepted" that government has legitimate authority "to commission and to subsidize" textbooks in history and social studies, America will have moved "a significant step down the road to 1984."[41]

When that social-studies curriculum was imposed in West Virginia, it provoked many people in that state to rise in rebellion, in part, because the curriculum taught cultural relativism.[42] As acknowledged by course-developer Jerome Bruner, the children were supposed to come to certain conclusions about social-studies topics through a process in which they were to be manipulated by the curriculum materials and through the efforts of their teacher – an engineering of supposed "discovery" by the children in a "context of problem-solving," to use Bruner's own jargon.[43]

Elementary & Secondary Education Act of 1965

There were unsuccessful attempts in the decades immediately following World War II to expand federal spending on K-12 education. For example, Sen. Robert A. Taft – the Mr. Republican of his day—tried, without success, to supplement the funds of low-wealth states and districts.[44] But Taft was also worried that federal control of curriculum, instruction and other school matters might too easily follow federal dollars. To prevent this, he proposed a firewall:

> Nothing in this act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over, or to prescribe any requirements with respect to any school or any State educational institution or agency, with respect to which any funds have been or may be made available or expended pursuant to this act, nor shall any term or condition of any agreement or any other action taken under this act, whether by agreement or otherwise, relating to any contribution made under this act or on behalf of any school, or any State educational institution or agency, or any limitation or provision in any appropriation made pursuant to this act, seek to control in any manner, or prescribe requirements with respect to, or authorize any department, agency, officer, or employee of the United States to direct, supervise, or control in any manner, or prescribe any requirements with respect to, the

> administration, the personnel, the curriculum, the instruction, the methods of instruction, or the materials of instruction, nor shall any provision of this act be interpreted or construed to imply or require any change in any State constitution prerequisite to any State sharing the benefits of this act.

The detail in Taft's firewall shows that it was written by someone with many years of experience as to how original congressional intent can be evaded by officials of the Executive branch.

Despite efforts by Taft and others to increase federal aid to education, notable expansion did not come until President Lyndon B. Johnson's Elementary and Secondary Education Act (ESEA) of 1965.[46] This was part of the Johnson administration's Great Society strategy and his War on Poverty.[47]

President Lyndon Johnson pushed the ESEA through Congress with unusual speed, so fast and with so little congressional deliberation allowed that the law was dubbed "the Great Railroad Act of 1965."[48] A past master of law-making in Congress, President Johnson knew that rushing the law through Congress quickly would give opponents little time to organize, whereas allowing time for congressional deliberation might lead to federal aid once again getting bogged down in the legislative process and ultimately getting defeated. In the years to come, proponents of national standards learned a lesson from the speedy 1965 passage of the ESEA and from other policy battles and used rush tactics during the Obama-era Common Core national-standards adoption process.

In keeping with such continued concerns about federal aggrandizement, the Elementary and Secondary Education Act of 1965 contained language taken from the National Defense Education Act, saying that "nothing" in the statute "shall be construed" to authorize any federal agency or employee to "exercise any direction, supervision, or control" over the curriculum and similar school matters.[49] That language remains in the ESEA to this day.

Creation of the U.S. Department of Education

Since the New Deal, there had been controversy over the danger of federal intrusion into local control over curriculum and instruction. Congress has been sensitive to the dangers of putting curriculum matters in the hands of the Department of Education, knowing of the department's immense influence through the funds it gives to states. As a consequence, Congress had put in two statutes – the General Education Provisions Act and the Elementary and Secondary Education Act—and now would put in the Department of Education Organization Act, explicit prohibitions that (in slightly different words in each statute) barred the U.S. Department of Education from directing or interfering with curriculum.[50]

The issue of federal intrusion into curriculum again came to the fore during the debate in the late 1970s over the creation of a stand-alone, cabinet-level national Department of Education.[51] During the 1975-76 campaign, candidate Jimmy Carter had promised such a department in public forums, in position papers, and, more specifically, to the National Education Association teachers' union.[52]

Carter's Secretary of Health, Education and Welfare, Joseph Califano had for many years opposed such a stand-alone department. He feared its decisions would be overly influenced by special interests that were well-organized at the national level, and he was alarmed at the potential for federal interference in curriculum, personnel, and administration of local schools.[53] Califano believed that "the pressures of local politics, close to the parents of the children in school, are far preferable to those of national politics."[54] Moreover, he noticed "a troubling tendency," among Executive branch officials and members of Congress, "to set curriculum priorities from Washington."[55]

During the 1978 consideration of creating a stand-alone Department of Education, Sen.

Harrison H. Schmitt (R-N.M.) made this prophecy about such a department:

> It is not difficult to imagine [the proposed Department of Education] establishing national "advisory" standards at some point in the future. Later, the department could require adherence to the compulsory standards, if Federal aid is to be continued. Next standard tests, developed by the Federal Government, could be mandated to check whether the compulsory standards are being met. Last, State and local authorities will be coerced into acceptance of a standardized curriculum as the "only possible" guarantee of meeting compulsory standards.[56]

Likewise during congressional consideration in 1978, conservative Republicans said that if the proposed department was created, "local diversity" would be reduced and educational decisions would be made in Washington, D.C. with regard to "course content, textbook content, and curriculum."[57]

Concerns over federal control entered into the legislative history of the 1979 bill that eventually established the stand-alone, cabinet-level department. The Senate report promised that the new department would never act directly to improve American education. The Department of Education, it noted:

> should not directly… improve American education. It is not intended to do so, because that is really the province and duty of the States and localities.[58]

Such concerns were echoed in the debate on the floor of the House of Representatives in June 1979, leading up to the passage of the Department of Education Organization Act.

To reassure critics, proponents stressed that the bill would explicitly forbid federal interference in curriculum and instruction. Rep. Christopher Dodd (D-Conn.) said:

> This bill specifically prohibits Federal intrusion in the determination of State and local needs and policies. The Federal role is clearly limited and specific…[59]

Rep. Jimmy Quillen (R-Tenn.) added:

> I am convinced that this bill does not provide any Federal encroachment in the classroom … There is a prohibition in the bill itself that says that the Secretary … cannot have any interference whatsoever in what is going on in the classrooms.[60]

On the floor of the House of Representatives, proponents of creating the department read section 103 of the law with its words about no "direction, supervision or control" over the curriculum. The House committee report on the bill emphasized that it contained a "clear prohibitive" on "federal interference" in the curriculum.[61]

Proponents of the department claimed that having a Department of Education would more effectively restrict federal interference in curriculum. At that time, educational programs were scattered over scores of government agencies, hence it was, proponents pointed out, difficult to monitor those scattered programs on compliance with requirements in the General Education Provisions Act not to interfere with local schooling.

According to Rep. Frank Horton (R-N.Y.) a liberal "Rockefeller Republican" and proponent of creating the department, a department that gathered these programs together would make monitoring of this requirement easier. It is easier, Representative Horton contended, to hold a single agency accountable "to make certain" that local control is not "usurped by the Federal Government."[62]

In response, Rep. Bob Walker (R-Pa.), another conservative opponent of creating the department, asked: What if the intentions of officials from a Presidential administration—back then in 1979 or in the future—do not share the explicit intent of the 1979 Congress when it comes to constraining federal power in education?[63] As James Madison wrote in *Federalist No. 10*, "enlightened statesmen will not always be at the helm."[64] And as Thomas Jefferson warned us, we should not silence our fears for the safety of our rights because we have too much confidence in our public leaders, even if they be persons of our own choosing.[65]

Representative Horton replied:

> That is not really a valid objection to the bill, they [the members of a Presidential administration] will have to carry out the mandate of Congress. If they do not, we [the members of Congress] will make certain that they do. That is the whole purpose of the oversight function of Congress: to make sure that agencies carry out the mandates that we pass.[66]

The legislative history of the Department of Education Organization Act of 1979, the language of the statute, and the intent of lawmakers are all clear — the federal government is not to direct or control the K-12 curriculum for the public schools in the several states.[67]

What Historical Experience Could the Obama Administration and Other Proponents of Common Core Draw on in Putting in Place the Common Core and Its National Tests? Sources and Methods of Imposing Federal Direction and Control

The Creation of the National Assessment of Educational Progress

At the same time as the ESEA was being created, preliminary work was also being undertaken for what later became the National Assessment of Educational Progress (NAEP). It is worth noting that when the exploratory committee for this venture first publicly advanced the idea of a national test at the 1965 White House conference on education, the delegates erupted in strenuous debate, with, as historian Hugh Davis Graham puts it, "opponents stressing the dangers of monolithic federal control of the curriculum."[68]

Martin Katzman and Ronald Rosen reported that during the White House conference, "at the extreme," there was a dread that "participation in national testing programs might be necessary to receive federal aid."[69] What was once a far-fetched notion was realized in 2002 when No Child Left Behind required states receiving aid to participate in NAEP – but the test, as it had emerged by then, had a minimally-intrusive sample design. The Obama program would extend the non-prescriptive test idea of the 1960s much further: to prescriptive national standards and tests for all students.

Lyndon Johnson's Education commissioner was Harold Howe II. Howe was asked whether he favored central control of curriculum from Washington, D.C., and changing American K-12 education so that it was run like the national school system in Japan.

Howe answered that America needed "a diverse system of education for a diverse society." He opposed a "centrally operated curriculum" of the sort that had been in place in France and was in place in Japan. He didn't want the American federal government dictating "this is exactly what you are going to study in third grade" to every public school in the country.

To illustrate his views on a national curriculum, Howe recounted a story about Adam Clayton Powell Jr., the African-American congressman from Harlem. Powell was chairman of the Education and Labor Committee of the U.S. House of Representatives in the 1960s. At one point, Powell held hearings on American history textbooks, and testimony at the hearings showed that different states, North and South, used textbooks that portrayed the Civil War in different ways. Powell called on Howe to testify and asked him what the federal government should do about these differing accounts in the textbooks. Howe's response: "Nothing. It is not your business in the federal government to write the history of the United States."[70]

Voluntary National Tests & Voluntary National Standards: The Carter Administration Initiative

In the late 1970s, President Jimmy Carter sought to have the federal government create a test – a voluntary national test. Carter's own HEW Secretary Joseph Califano opposed

his voluntary national test and accompanying curriculum-content standards, whether they were mandatory or "wholly voluntary."[71] Califano thought that such a national K-12 test would encourage "rigid uniformity" and that whoever had control of what went into the national test would unavoidably have too much power. Califano wrote that in the United States, control of curriculum "has always rested with states and localities," not with Washington. "Any set of test questions that the federal government prescribed" would understandably be "suspect" as a "first step toward a national curriculum." Carried to its full extent, Califano emphasized, "national control of curriculum" is "a form of national control of ideas."[72]

The Carter administration gave up the idea of voluntary national tests when the National Academy of Education, a group of eminent scholars, issued a report in March 1978 opposing national tests, whether "mandatory or voluntary":

> A mandatory national test would have the Federal government interfering with the responsibility of the states for education. … If the tests are to provide information about the progress of American education, the National Assessment of Educational Progress accomplishes that purpose without infringing on the states' responsibility.
>
> The notion that Federal government should be the Bureau of Standards for educational testing is both professionally unsound and politically dangerous. Since tests reflect the educational goals for many students and teachers, the Federal approval or disapproval of tests is in effect having the Federal government determine what the schools should teach. …
>
> Federal approval of tests is … risky. The power to approve tests is ultimately the power to approve the curriculum. … The Federal government should not be thrust into the position of fostering a national curriculum. …[73]

"A Nation at Risk" report (1983) and other Reagan Era Initiatives

In 1981, Ronald Reagan's Secretary of Education Terrel Bell appointed a national commission to look at the condition of education in the United States. The commission wrote its report during a time when American public opinion was worried by prosperity in Japan, and an economy and SAT scores that were in decline in America.

But, as Paul Barton points out, *A Nation at Risk* called not for federal action, but for action by schools, local districts, and states. The report opposed a federally-sponsored test and called instead for a system of "state and local standardized tests."[75] As Chester Finn wrote, this was in accord with "the historic apportionment of constitutional responsibilities between state and nation."[76]

Bill Bennett, the second education secretary under President Reagan, followed up on the call for higher standards in *A Nation at Risk* by having the Department of Education create and issue under his name a set of recommended K-8 and high school curricula: "James Madison High School" (1987) and "James Madison Elementary School" (1988).

Early in each document, Bennett takes care to distinguish between a mandatory national curriculum and an exemplary curriculum that states and local districts can use as a resource. Here, for example, is his cautionary note on the department's recommended elementary curriculum:

> … [The James Madison Elementary School curriculum is not] a statement of federal policy. The power to mandate an elementary school curriculum for American students does not belong to the federal government; the Department of Education is specifically prohibited by statute from exercising direction, supervision, or control over the curriculum or program of instruction of any school or school system. I would have it no other way. This book contains my views on an important matter. But it remains a matter best left for final decision to state, local, and private authorities. They know their own requirements and problems. Though the curriculum described and advocated in this document reflects the quality and character of numerous real-world models, it is intended more broadly as a statement of goals and as an outline of one means to achieve them.[77]

Bennett was vocal at the bully pulpit, but, as Paul Peterson of Harvard has put it, Bennett at that time believed "federal direction" of the nation's schools was "unnecessary" because "education was a state and local responsibility."[78]

Also in 1988, federal policy on a federal test called the National Assessment of Educational Progress (NAEP) changed.[79] The NAEP had previously reported student achievement on a national level, then began to report achievement state by state.[80] The NAEP serves as a rough yardstick by which the performance of states can be compared.[81]

One of the complaints of those who wanted national standards and tests had been that there was heretofore no way to compare states. In the days before NAEP results were reported state-by-state, Chester Finn had said that he was concerned about the absence of comparability. But he wrote, that for purposes of "placing accountability where it matters" and "leveraging behavior change in students and schools," "state-level testing" is "fine." "National testing was never needed" for such purposes.[82]

After 1988, NAEP began to report state-level scores. This complaint about an inability to compare states was no longer aired. The old complaint was transformed into a new complaint that parents ignored NAEP and were misled by the multiplicity of state performance standards.[83] As Obama's Secretary of Education Arne Duncan put it, "children in Mississippi and children in Massachusetts" should be "held to the same standards" and "measured by the same yardstick."[84] Duncan doesn't like the idea that under America's system of federalism there are "50 different standards, 50 different goal posts."[85]

Allegedly mothers in San Diego and Augusta, Maine, wanted to easily compare their individual children and their schools to children in other schools across state lines and in terms of a single national scale.[86]

Economic journalist Robert Samuelson called this a "puny benefit," especially when compared with the large change involved in national testing of all students.[87] Indeed the logic of this argument, leads not to national testing but to compulsory world testing of all students under the auspices of some world education authority, perhaps UNESCO.

Proponents of a European-style ministry of education could not be satisfied with a NAEP that merely reported states' results. NAEP tested a sample of students, not all students, and it was not a high-stakes test—so it would not drive curriculum and instruction.[88] As Robert Rothman put it: The NAEP does not function as "the kind of guide for instruction" that advocates of national standards want.[89] The nationalizers, for their purposes, needed national curriculum standards and a national test for all students.

National Goals, Voluntary Standards & Tests: The George H. W. Bush Administration Initiatives

At the beginning of President George H. W. Bush's administration, he held a "summit" meeting with the nation's governors in Charlottesville, Virginia.[90] There the President and the governors agreed to set forth national performance goals in education – "goals that will make us internationally competitive."

At this point, President George H. W. Bush pioneered the strategy of turning to the National Governors Association (NGA) to formulate and promote something that he wanted to be led by the federal government. He asked the NGA to work with the Bush administration in formulating the specific language of the national education goals, official goals that President Bush wanted enacted into federal statute.[91] A somewhat similar strategy of relying on the NGA was used by the Obama administration when it cooperated with the NGA in 2010 by in effect endorsing the Common Core national standards (which the NGA had co-sponsored) and funded national tests and curriculum based on those standards.

President Bush and his Education Secretary Lamar Alexander had their own educational

program called America 2000 that promised voluntary national testing (American Achievement Tests) aligned with "world-class standards."[92] The legislation designed to put the America 2000 agenda into effect contained the suspiciously convoluted notion of "state-level national assessments" – an oxymoronic idea that would come back from the dead, stronger than ever, during the Obama administration.[93]

The Bush White House's own Office of Management and Budget, when it examined America 2000, said that the proposal for national standards and tests introduced "philosophical issues" of a "federal curriculum."[94] Theodore Sizer—then a professor of education at Brown University, having served as dean of the Harvard University school of education—said at the time that the proposal was an "arrogation of authority over children by the central government," being undertaken "in the name of high standards and international competition." He termed such an arrogation of authority a "very questionable proposition."[95]

The national tests never went anywhere because of disagreements among rival groups of educators and between congressional Republicans and Democrats.[96]

With regard to George H. W. Bush's promised curriculum standards, the Department of Education, the National Endowment for the Humanities, and the National Science Foundation paid with discretionary funds for the writing of national standards by the professional subject-matter associations.

The Senate rejected national history standards, after they first emerged in 1994, by a vote of 99 to 1.[97] The history standards were so controversial and divisive that they put a stop to appointing the members of the Clinton administration's proposed panel for certifying curriculum-content standards and tests. Indeed, the debacle of national history standards stymied the cadre who sought national standards for over a decade, until they restarted their efforts in 2006.[98]

Here is what Ravitch has to say about the process in the early 1990s of creating and promulgating these exemplary national standards:

> We had about $10 million in discretionary funds, and we partnered with other federal agencies [National Endowment for the Humanities, National Endowment for the Arts, National Science Foundation]to give grants to coalitions of professional associations of teachers and subject matter specialists. The product was a publication of voluntary national curriculum standards in the arts, history, geography, science, economics, civics, English, and physical education. The idea was that these would be what I call "aspirational standards." States and districts could draw upon them if they wished, or ignore them. There was no federal funding to promulgate them. …
>
> The federal government had no hand in their writing, and no intention of incentivizing anyone to use them.[99]

Ravitch mentions having used discretionary funds, which allowed the George H. W. Bush administration to avoid statutory authorization from Congress for the voluntary national standards and hence avoid congressional scrutiny for some years.[100] Ravitch points out that using these discretionary funds put the Department of Education on "dangerous ground." It was dangerous because Congress "had not authorized" the department "to make grants for national standards, even voluntary ones." Ravitch acknowledges as well that the department had been prohibited by statute from "exercising any control" over "curriculum, instruction, administration, or textbooks."

The department made its initial grant, during the George H. W. Bush era, for writing national standards to the National Academy of Sciences, a group which advises the federal government. Ravitch writes that the reputation of the National Academy of Sciences "neutralized criticism," and the grant was awarded. In retrospect, Ravitch writes, that she has to "wonder" about the department's "arrogance" and her own "responsibility" for "letting the genie out the bottle."[101]

In later years, the National Academy of Sciences was turned to during the Obama administration to write the curriculum framework for the national Next Generation Science Standards.

The Clinton administration used discretionary money to start the test-development process for its proposed national tests. Its Department of Education acted, as Chester Finn put it, "without explicit congressional authority." Congress was "stiffed," Finn argued, and should have had "something to say" about the procedures for "so momentous a shift in American educational federalism."[102]

Likewise, the Obama administration was to use discretionary funds from the economic stimulus bill to coerce states to sign up for the Common Core national standards and to pay for national tests and national curriculum materials – in this way also acting without congressional approval for the specifics of a "momentous shift in educational federalism" and again largely escaping congressional scrutiny.

In essence, the plan of the George H. W. Bush administration had been for the subject-matter associations to create the curriculum-content standards. Then the standards would be reviewed and certified by a national board. (After a board with this function was authorized during the Clinton administration, its members were never appointed.) Then each state could adopt each set of standards as a whole or use them as a resource in writing their own standards. The national voluntary standards were not to be required in order to receive federal aid; nor were they to be imposed on the public schools of the states by federal law.[103] Indeed, it is important to remember that under ESEA at the time of the George H. W. Bush administration, states were not required to have curriculum-content standards for all students.

Federally-Required State Standards & Tests for All Students and Voluntary National Standards & Tests – Bill Clinton Administration's Initiatives

Bill Clinton won the presidency in 1992 having pledged that his administration would "establish tough standards and a national examination system."[104] National education reform was often portrayed as critically necessary during the presidential terms of Clinton, George W. Bush, and Barack Obama and advanced in the name of enhancing America's national competitiveness.[105]

One of the most thoroughgoing proposals for national curriculum-content standards and tests came at the beginning of the Clinton administration. This was the "Dear Hillary" letter written by Marc Tucker, president of the National Center on Education and the Economy. The letter advocated national curriculum-content standards as part of a European-style system of national workforce planning. What Tucker sought was a "seamless web" of interwoven federal education and labor policy that would channel Americans "cradle to grave.[106] Lynne Cheney, past chairwoman of the National Endowment for the Humanities, wrote that Tucker's "Dear Hillary" letter in 1992 provided "vivid" evidence to support the views of those who were concerned that Clinton's proposal in 1997 for national tests would be "merely the first step" on the road to "central control of all aspects of K-12 education."[107]

For its part, The Department of Education under Clinton's Secretary of Education Richard Riley said that students were being harmed by a "watered down curriculum" in the states and localities. Secretary Riley said the national standards would be the "lighthouse," which the state could look to as indicators of quality, but the states would write their own curriculum-content standards.[108]

The Clinton administration's Goals 2000 program handed out money to the states to write curriculum standards and create tests aligned to them.[109] The Goals 2000 law was quite similar to the George H. W. Bush administration's never enacted America 2000 plan, but there was one crucial difference. Under Goals 2000, the federal panel for certifying standards and tests gave much more political-appointment power to the Executive Branch.[110]

The members of Goals 2000's federal panel to review and certify state and national standards were never appointed because of the controversy over the proposed national history standards and Republican opposition to an expanded federal role in curriculum.[111]

The Clinton administration endeavored to put in place a comprehensive national education plan through the Goals 2000 Act and revisions in ESEA. This comprehensive plan was accompanied by granting broader supervisory powers to the Department of Education. In its final form, the Goals 2000 law had said unambiguously:

> No state is required to have its standards or assessments certified, or participate in Goals 2000 systemic improvement programs as a condition of participating in any federal education program.[112]

The rhetoric surrounding Goals 2000 in March 1994 had stressed how voluntary the administration's reform proposals were.[113] A portion of a small pot of money ($420 million) was offered as an inducement to each state, to be used to help willing districts make the favored changes. Then, once states had signed up for Goals 2000 and the education world was accustomed to the reforms, the Clinton administration made adopting the reforms a requirement (in the reauthorized ESEA) for receiving regular federal aid to education (over $6 billion) and other federal education programs – to total more than $10 billion, a considerably stronger inducement than the small pot of Goals 2000 money.[114] "Enough" money—as former Secretaries of Education Bennett and Alexander put it—"to force state and local officials" to follow the law's "dictates" – "even when state and local officials know better."[115] In my expert opinion, much the same strategy was later used by the Obama administration to lock in the Common Core national standards and national tests.

For example, under the Clinton-era reauthorization of the Elementary and Secondary Education Act, states were now required (as a condition of getting federal money) to have state-developed curriculum-content standards in reading and math and state-developed tests aligned with the content standards, together with performance levels for the tests – all of which now had to be federally approved.[116] As Alexander and Bennett wrote, the Clinton revisions to ESEA "mandated" federally-approved standards "that Goals 2000 said would be voluntary."[117] States were pushed from their past use of norm-referenced tests to new use of criterion-referenced tests aligned with their standards. Test results had to be disaggregated by groups.[118]

By requiring states to create educational plans based on federally-approved standards, the revised ESEA expanded the role of the federal certifying panel and shifted it "ever closer," in the words of Alexander and Bennett, to becoming a "national school board." A state like Tennessee—Alexander and Bennett pointed out—"no longer has the final say" over what the young people in that state study in public schools.[119]

Another Clinton-era change was federal monitoring of all students. ESEA had originally been justified as a Great Society anti-poverty program. Thus, federal ESEA monitoring had concentrated on the disadvantaged. During the 1970s and 1980s, federal monitoring had evolved from overseeing state compliance with rules that spending be targeted on the disadvantaged to requirements that states show improvement in the achievement of the disadvantaged.[120]

In Goals 2000, which attracted states via grant money, federal monitoring expanded from only the "disadvantaged" to "all students."[121] As a consequence, under Goals 2000, "for the first time," as one education writer put it, the Department of Education would have "substantial influence" over "what is taught" and "how it is taught."[122] The "switch" in this "bait and switch" was that federal supervision of "all students," which was tied to small grants under Goals 2000, would be tied to all major federal funding under the reauthorization of ESEA.

The Democratically-controlled Congress rushed through the vote on the conference report on the 1994 reauthorization of ESEA. Members of Congress were not allowed the customary time set aside to read the bill. As Alexander and Bennett commented, it was a "safe bet" that "virtually nobody" voting on the conference report would have "actually read the final text." Nor had the country had time absorb what was in the bill and debate the final contents.[123]

And with the final congressional vote on reauthorization, the change to monitoring all students was locked in, and this also had the consequence of nationalizing federal school-improvement efforts. As historian Joel Spring writes, coverage changed from "a specified group of students needing help" to "all students in all public schools." All public schools and all their teachers and students were now "required to conform to federal requirements." This constituted, as Spring says, "a major change in the governance of public schools."[124]

Patrick McGuinn called the changes made through Goals 2000 and the 1994 ESEA reauthorization "an important ideational turning point for federal education policy."[125] Gordon Tullock, one of the originators of public choice analysis in political science, notes that it is an important change to alter a social program from covering a targeted subset of a population to covering all of it and calls such an all-inclusive policy "Bismarckian"—after Prince Otto von Bismarck, the German imperial chancellor who was famous for such policy changes and famous for creating the first modern welfare state.[126]

Bill Bennett, Lamar Alexander and Republican Senator Daniel Coats, wrote an article in William F. Buckley's *National Review* in 1994 that echoed parts of the analysis of Joel Spring, though they came from a different place on the political spectrum than the left-leaning Spring. The three conservative authors said that the Clinton administration's Goals 2000 and the 1994 reauthorization of ESEA would "erode" local control of schools across America. President Clinton, according to the authors, had taken over and re-routed the standards-and-accountability movement launched by President George H. W. Bush and "transformed" a "nationwide reform effort" into a federal program. The two Clinton-administration laws, the authors said, were "bad for children, for education, and for American federalism."[127]

The Clinton-era changes went a long way toward putting into effect the program for "systemic" reform proposed by Jennifer O'Day and Clinton Education Department official Marshall Smith. O'Day and Smith acknowledged that "states have the constitutional responsibility for public education in the United States," but they regarded "fragmentation" of the "current policy system" as a "major obstacle" to reform. In other words, they objected to America's federal system.[128]

During the debate over Bill Clinton-era National Science Foundation-sponsored curricular materials in the 1990s, Ravitch noted the "clear prohibition" in federal statute that says that the federal government "can't directly endorse or promote curriculum." She particularly criticized aggressive marketing of federally-approved curricular materials.[129]

Biology professor Michael McKeown and his colleagues wrote that the NSF-sponsored local systemic initiatives empowered employees of a federal agency to take over state and local decision-making on curriculum and teaching methods, "without broad public examination and discussion" of the educational approach being promoted by the federal agency.[130] Indeed the NSF threatened to cut off $50 million in funding for K-12 education in California if its preferences on curriculum-content standards were not followed.[131]

Indeed, the National Science Foundation itself acknowledged that "systemic reform calls for" districts and schools to "jettison" their "traditional role" as "regulators of local practice" and take on their "new role" as "technical assisters."[132]

The events of 1994—the Goals 2000 Act followed by the rushed reauthorization of ESEA—led to a backlash against federal activity in K-12 education.[133] Hence, not much happened on national testing during the latter part of Clinton's first term.[134] During the 1996 education summit of the governors and the President, the governors indicated to President Clinton that they didn't want him to go forward on national testing, and that the states wanted to develop state-level curriculum standards and tests of their own. The group Achieve that was later to play a central role in the creation of the Common Core national standards, ironically, was created at this time by the National Governors Association lobbying office to provide technical assistance to the states to create an alternative to national standards.[135]

The year 1994 brought a Republican majority to the House of Representative, elected in large measure because of a public reaction against the perceived federal overreach of the Clinton administration.[136] The new Republican members of Congress who came to Washington in 1994 and Bob Dole, the Republican Presidential nominee in 1996, had campaigned against the extent of federal involvement in K-12 education, so President Bill Clinton did not want to give them any more targets to aim at.[137]

Bob Dole had voted against Clinton's Goals 2000 Act and denounced the national history standards during the 1996 campaign.[138] The 1996 Republican national platform called for repeal of the Goals 2000 program and said that the federal government has "no constitutional authority to be involved in school curricula."[139] K-12 education was Clinton's key issue in 1996 as he sought the vote of the "soccer moms, but he talked about "local control," flexibility, and popular micro-reforms – like school uniforms—not national curriculum-content standards and tests.[140]

After Clinton's victory in the November 1996 election, however, Clinton felt he was in a stronger political position, so he sought voluntary national testing of reading in fourth grade and of mathematics in eighth grade, based on national standards.[141] The designers of this new national standards initiative were Michael Cohen, then the top education adviser in the White House, later head of Achieve during the writing of the Common Core national standards; and Marshall Smith, a top official in the Department of Education, then during the Clinton administration and later during the Obama administration.

But Clinton's proposed voluntary national tests never saw the light of day, and the test questions written for the national test were turned over to NAEP.[142] In addition to opposition from liberal Democrats (who had low expectations for black improvement under testing and accountability), Clinton's national tests faced additional criticism because of the governance of the tests, because of the planned content and format of the tests, and because the national tests meant an expanded federal role.

Diane Ravitch condemned the unchecked presidential power and lack of bipartisanship in Clinton's plan for the certification panel. She said that the Clinton administration had put the development of the national tests "under its own tight control."[143] Chester Finn wrote that "letting the Education Department run the [national tests]" on behalf of "its school-establishment and ivory tower pals" was an error. President Clinton had chosen, Finn said, to give that control of the tests to "his own appointees and contractors and experts of their choosing." According to Finn, this "arrangement" – aspects of which the Obama administration was to mimic in the years ahead—"invites future manipulation" of "sensitive matters" such as grading and the content of test questions.[144]

Ravitch concurred, writing that the Clinton administration was "establishing a dangerous precedent." The precedent that the Clinton administration was laying down was that the party in the White House has control over national tests—"to pick the contractor without an open competition, to select the committees

that will write the tests and to control the reporting of the results." Ravitch asked the liberal readers of the *Washington Post* to imagine "what will happen" when the Republicans return to the White House. She then tried to evoke her liberal readers' worst nightmares, suggesting that the next Republican secretary of education might well be Lynne Cheney or Phyllis Schlafly. Whoever was in that post would "revise the national tests, choose congenial experts to write the reading and math tests," and make alterations "that seem right to the party in power."[145]

In Congress, Republicans opposed national tests because they constituted an expansion of the federal role in K-12 education. In the House, Rep. Bill Goodling (R-Pa.) contended that a national test would overthrow local control over K-12 schooling.[146] Rep. Frank Riggs (R-Calif.) added that we already have "plenty of testing." Many states were already "doing their own thing" and were understandably worried about federal inference with their state efforts. It is, Riggs said "all well and good" to say, as the Clinton administration did, that these were voluntary tests, but "what's voluntary today can be mandatory tomorrow."[147]

In the Senate, Sen. John Ashcroft (R-Mo.) opposed a voluntary national test just as strongly. He contended that a "dumbed-down national curriculum" and a "federal takeover of our schools" was something that America could not afford.[148]

Charles Kolb, a former White House aide in the George H. W. Bush administration, said that the Clinton agenda was national uniformity of textbooks and teaching methods.[149]

Wisconsin Republican Gov. Tommy Thompson wrote in the *New York Times* that it should be "up to states and local school boards" to determine what students are to learn. "Education is a local issue." Local control is what "our parents and communities want," and that's how things should stay. After all, Thompson said, the states and local taxpayers "are the ones who pay for the schools."[150]

Since the decision to have national tests is a decision of "historic proportions, Ravitch said that the issue of who should control the national tests is "not just a technical quarrel." The federal government, Ravitch pointed out, had "never done anything like this before." An initiative of such consequence ought not be undertaken "without full public discussion and bipartisan support."

Embarking on national testing is "precisely the kind of issue" that ought to have congressional authorization, according to Ravitch, yet the Clinton administration was plowing ahead "without public hearings or explicit authorization by Congress." The Department of Education, she wrote, "certainly has never been authorized" to initiate a national testing program for individual students. "No matter how terrific an idea" a President might propose, America's Founders "did not believe" that the Executive branch should be able "to impose new programs unilaterally."[151]

Echoing Ravitch, Chester Finn—who favored then and favors now national tests "properly done"—wrote at the time that Clinton's voluntary national tests were "the most radical shift" in America's "educational federalism" since the passage of the ESEA. He said that "editorial writers and business spokesmen" were "giving bad advice" urging Congress to get onboard with "the President's well-intended initiative." Finn noted that the Clinton White House had "brashly asserted" that it somewhere, somehow had the statutory authority to create the tests and was using "discretionary dollars" to finance the job. President Clinton's Education Department had moved swiftly, having signed a "multi-million [dollar] contract" and having already signed up six states and fifteen cities to participate before the national testing issue was considered by Congress. Finn urged Congress to "throw these tests out of school," and Congress did just that.[152] Finn contends that "rancid taste" that Clinton's 1997 national testing proposal" left "on Washington's palate" discouraged national-test

proponents for almost a decade from mounting another effort to institute national tests.[153]

No Child Left Behind – The George W. Bush Initiative

George W. Bush sought to modify the federal-aid-to-education law to focus on school accountability for student performance. He said he did not like success in education to be measured by "dollars spent," rather than "results achieved."[154] Bush had made K-12 education a central issue in his campaign. He pointed to his record on education at the state level in Texas and to Texas's strong accountability system. Bush proclaimed that he opposed "federalizing education," and the Republican national platform opposed national tests. In contrast, during the campaign, Bush's opponent Vice President Al Gore proposed reviving the 1997-98 Clinton administration proposal for voluntary national tests.[155]

The George W. Bush-era reauthorization of the Elementary and Secondary Education Act was called No Child Left Behind (NCLB).[156] The details of the law are many. But among other things it called (as a condition of receiving federal money) for states to test all students in reading and mathematics in each of grades 3 through to 8. The states were each to create their own curriculum-content standards and tests with performance levels. Guidance through Department of Education-sponsored peer-review panels could only be on the process of creating the standards and tests, not the content.[157]

States had to have a state-created way to show that every district and school was making adequate yearly progress toward getting all students to at least grade-level. There were corrective sanctions specified in NCLB if adequate progress wasn't made.

Frederick Hess has pointed out that because the congressional lawmakers who wrote NCLB sought to "avoid anything that resembled a national curriculum," the language of the statute "carefully stipulated" that the federal government "would not determine" standards, tests, or definitions of Adequate Yearly Progress.[158]

All states were required to participate in NAEP. State results on this rough yardstick might shame state official who had made their curriculum-content standards, tests and performance levels too easy, and it could be a basis for emulation and rivalry between the states. NCLB required more detailed disaggregation of data by groups, publication of that disaggregated data, and use of that data in state accountability systems.

George W. Bush, like other American politicians before and since, said that in America "we do not have a national school board and do not need one." "The President," he affirmed, "is not a federal principal, and I will not be one."[159] In the words of Ravitch, NCLB "sidestepped" the "thorny issue" of national standards and national testing "by requiring the states to use their own."[160]

During the George W. Bush years, there was substantial opposition to national standards within the administration and opposition to national curriculum from outside it. When the administration tried to put into effect federal support under NCLB for reading programs that had a scientific basis, providers of programs who thought they wouldn't get contracts or thought they were likely to be judged unscientific charged in 2006 that the Bush administration had stacked and rigged local advisory units in order to create a national curriculum in reading instruction. These charges were echoed by Democrats in Congress in 2007, and the administration responded by relaxing the criteria for evaluating grant proposals for reading instruction.[161]

Part of the debate over the NCLB reading program concerned whether Department of Education officials had "overstepped," as Education Week reporter Kathleen Kennedy Manzo put it, the long-standing provisions in ESEA that "prohibit" department officials from "influencing or dictating" the "curricula, assessments, or instructional approaches" used by schools or districts.[162]

In 2007, the National Council of State Legislators adopted an unambiguous policy opposing national standards, even voluntary ones. The council of legislators said that "rigorous state standards" can be "most readily accomplished" by refining existing state standards, "not through federal action"—which would "[fly] in the face" of the role of states "since the inception of our system of providing education."[163]

In the administration, officials thought national decision-making on national tests and curriculum would only be buying trouble – at a time when reformers should be concentrating on boosting student learning. On the campaign trail in 1999, George W. Bush had said he was opposed to federally-created national tests, adding: "If Washington can control the content of tests, it can dictate the content of state curricula—a role our central government should not play."[164]

Margaret Spellings, George W. Bush's second secretary of education, was asked whether she believed both biological evolution and special creation should be taught in the schools. She answered that it didn't matter what she thought since the federal government did not govern curriculum.

"It doesn't matter what I think about evolution," Spellings would say. She and the Department of Education were "not in the content business or the textbook business or the curriculum business" she said. "That is left to state and local folks to work out. . . . That's not our role here in Washington."[165] She said she didn't favor "a one-size-fits-all national standard" "that morphs into a national curriculum that morphs into national textbooks." She thought it was the "the wrong way to go" and "a giant time-waster."[166]

When Spellings was asked why she thought the national-standards approach was wrong, she had three responses. One was: Why elevate contentious issues to the national level? To set national standards, there would have to be a prolonged debate over evolution at the national level. History standards were sure to be contentious, as they had been in early 1990s.

Second, she thought that national standards were "not synonymous with higher standards." Her third point was the most important:

> [I]t goes against more than two centuries of American educational tradition. Under the Constitution, states and localities have the primary leadership role in public education. They design the curriculum and pay 90 percent of the bills.[167]

Spellings often pointed out that existing measures like international tests, NAEP, and state tests were already telling us that America as a whole and many states and schools needed to improve and that the achievement gap needed to be closed.

> As my friend Bill Gates has said, if the speedometer says you're going too slow, you don't need a new speedometer. You need to speed up. That's just what NCLB is telling us.[168]

The Coming of the Common Core National Standards

In 2006, the Thomas B. Fordham Foundation issued a report proposing various strategies for obtaining national standards or the functional equivalent.[169] Two of the strategies proposed in 2006 were:

- The federal government creates and enforces national standards and assessments
- The federal government or a private organization creates voluntary standards and incentive for states to adopt them.

What actually happened in 2010-11 was that private organizations created the national standards and the federal government pushed 46 states plus the District of Columbia to adopt them.[170] Also, since 2010, the federal government has funded the creation of national assessments and will use them (or federally-approved alternatives) to enforce adherence to the Common Core. Now, using NCLB waivers, the Department of Education is using an even more coercive approach than before to make national standards and tests permanent and to bring along a national curriculum. (It should be recalled that the Clinton administration, which used Goals

2000 in a bait and switch, eventually got 48 states to sign onto Goals 2000—but Congress nonetheless proceeded to abolish the Goals 2000 panel for certifying national and state standards.)[171]

At the same time, the rhetoric being used by the Obama administration and its Department of Education and by proponents of national standards is as if an entirely different strategy was being followed. Back in 2006, Fordham had proposed a third strategy—a confederacy-of-the-states strategy—and thereafter national standards proponents found it rhetorically useful to assert that such a confederacy strategy had been adhered to:

- The states band together to create common standards and tests.

But that wasn't what happened in reality. As Joy Pullmann writes:

> [G]overnors and states did not create Common Core. Private trade organizations did. There is no legal avenue for governors to get together and make national policy. Any major policies governors support should become law through elected state legislatures. This is how a republic works.
>
> Governors cannot lawfully change law through executive action….In almost no case did Common Core become law through a bill that any legislature duly passed. And in the vast majority of cases, no institution comprised of elected officials approved Common Core.[172]

The Common Core national standards began not in the deliberations of state legislatures but in the private meetings in 2006 of perennial advocates of national standards. The first meeting was convened by James Hunt, former Democratic governor of North Carolina.[173] The strategy worked out over time by Hunt and his James B. Hunt Jr. Institute for Educational Leadership was to have national standards that could be described as created by the states.[174]

A series of meetings were held to reinvigorate the cadre of people who had long supported national standards (but had been stopped by the 1995 debacle of the national history standards), to bring in new people, and to debate strategy. The Hunt Institute paid the National Research Council, a group that advises the federal government, to conduct workshops on how to bring about national standards.[175]

In 2007, the Council of Chief State School Officers (CCSSO) and the National Governors Association (NGA) Center for Best Practices joined the cadre pushing for national standards.[176] The auspices of the lobbying arms of the state schools chiefs and the governors were vital to the strategy of national standards proponents. They already had their efforts in motion (before any lobbying groups for state officials were on board), but now they could label their initiative "state-led."

Gene Wilhoit, executive director of the Council of Chief State School Officers, in a candid moment during his tenure at CCSSO, said that he does not consider an activity organized through CCSSO and NGA (like the national standards initiative) to be one that is in fact led by states, and I would confirm this insight by pointing out that no one has ever described CCSSO's leading role in the Clinton-era national standards as having made those standards "state-led."[177]

Between spring of 2007 and the beginning of 2009 (after the election of President Barack Obama), the national standards cadre met many times and decided to create their vehicle (the Common Core State Standards Initiative), settled on the details of their strategy, and decided to forge ahead with actually creating the national standards themselves.[178]

What was the background to the writing of the national standards? A central group in the creation of the national standards was Achieve, Inc.

Achieve was founded in 1996 by the National Governors Association and some corporate leaders to work with state schools superintendents on curriculum-content standards, graduation requirements, tests, and accountability systems.[179]

The governors' lobbying group founded Achieve after the 1996 education summit to ensure that states could have high-quality standards of their own, not national standards. Indeed, when the NGA created Achieve, the NGA specified that Achieve would not certify or approve any standards, and, in particular, it would "not endorse, develop, or financially support the development of national education standards."[180] Promises that came to be breached, rather than observed.

In 2001, as the No Child Left behind Act was being created, Achieve, the Education Trust, the Thomas B. Fordham Foundation and the National Alliance of Business joined together to create the American Diploma Project (ADP). The project had as its purpose making high-school diplomas indicators of college- and career readiness.[181]

Then, after more than a decade of sticking to its original assignment and improving state standards and testing, Achieve's activities changed over into activities that were precursors and even direct antecedents of the Common Core national standards. As the organization itself explains:

> Through such efforts as the development of the American Diploma Project benchmarks (expectations in English and math anchored in college and career readiness often considered to be the precursor to the Common Core State Standards), the Alignment Institutes (through which 22 states brought teams together to align their high school standards with college- and career-ready expectations), and the ADP Assessment Consortium (a group of 15 states that came together to develop common mathematics exams), states in the ADP Network have in many ways helped drive the nation towards understanding the value and necessity of having common expectations for all students.[182]

Chester Finn, the head of the Fordham and hence a partner with Achieve in the American Diploma Project, summed up the situation at the time in his 2008 autobiography: The American Diploma Project initially produced a set of twelfth-grade benchmarks in English and math for five states. Then, Finn wrote, "assisted by the Gates Foundation," the ADP was working to recruit more states "to join the venture" and to persuade "K-12 officials" to adopt the ADP benchmarks for twelfth grade and get the rest of their standards to lead up to those twelfth-grade benchmarks.[183]

In Achieve's 2008 report *Benchmarking for Success* (co-sponsored by the National Governors Association and the Council of Chief State School Officers), Achieve called for the states in America to follow the path taken by Germany, where states (*Bundesländer*) had previously been in charge, but recently the federal government had supported a thorough centralization of curriculum-content standards and testing.[184] The report called for the federal government to play an "enabling role" in having the states adopt nationally "a common core of internationally benchmarked standards" in math and English for grades K-12.[185] "Benchmarking" the curriculum-content standards meant, according to Achieve, having standards that "match or even surpass" those in high-achieving countries.[186]

By mid-2008, Achieve changed over from the emphasis on a meaningful diploma and providing technical support on state standards and had become one of the central institutions in creating the national curriculum-content standards and tests.

In 2009, the national standards cadre added ACT and the College Board, two major testing firms, to their ranks.[187] The national standards initiative then proceeded to write the national standards by a deadline set by the U.S. Department of Education.

Common Core National Curriculum-Content Standards and National Tests: The Obama Administration Initiatives

The George W. Bush administration had faced the issue of national standards and rejected them. Instead of taking over state standards and state tests, it had used the No Child Left Behind Act to push the states into reporting

more disaggregated data, with governance of the details left in the hands of the states.

The Obama administration began to espouse the national standards initiative, in Robert Rothman's words, "soon after taking office." Education Secretary Duncan and his counselor Marshall Smith had been advocates of national standards before they were appointed by President Obama. As a rhetorical device to advance the national standards, Secretary Duncan turned to an old myth— beloved and extensively used since the New Deal in a variety of policy arenas – the danger of a "race to the bottom."[188] The fact that there was in reality no such race to the bottom was not allowed to get in the way of the rhetoric.[189] Duncan claimed that "as a country," performance standards in America have been "dummied down," and America has experienced "what we call a race to the bottom." Duncan proposed to "fundamentally reverse that." To do so, he called for national curriculum-content standards.[190]

President Obama and Secretary Duncan called their education program the Race to the Top (RttT). Through the Race to the Top program the Obama administration and its state level collaborators have attempted to establish a classic New Deal intergovernmental cartel. The program disbursed about $75 billion to the states according to grandfathered-in formulas. It effectively endorses Common Core national standards, which are likely to function as a ceiling on academic expectations. It also uses federal funds on projects that in practice will suppress innovation in curriculum and testing. Such federally-led cartels have been increasingly characteristic of intergovernmental relations since the New Deal. They lock in the status quo, hobble interstate competition, and stifle innovation.

As Ravitch once wrote, "all federal education programs" are "designed" by "lobbyists employed by education interest groups."[191] The interest groups that wanted national standards, wanted no appearance of federal involvement in the early stages. They had decided to pass over Congress and hoped to lock in the national standards, once they were created, through the directives and actions of the Department of Education.

Chris Buttimer, when he was a doctoral student in education at Harvard, said that Common Core "might" have been initiated by state officials at the outset, although he finds that "only part of the story." But since then:

> "This is clearly coming down from the Arne Duncan administration as well. … [Common Core] is essentially a federal initiative at this point, having been created by a small group of people, including very few if any teachers, … and it has been at the very least aggressively encouraged for states to adopt, particularly through the Race to the Top funding."[192]

In 2009, the first year of the Obama administration, Robert Scott, Texas commissioner of education, criticized this strategy:

> [R]ecent efforts by the U. S. Department of Education … to adopt a national curriculum and testing system in the United States … can be seen as a step toward a federal takeover of the nation's public schools. …
>
> [A] number of entities that develop and market education assessments and materials and several non-profits have banded together in an effort they have named the "Common Core Standards Initiative." … [T]he true intention of this effort is to establish one set of national education standards and national tests across the country. Originally sold to states as voluntary, states have now been told that participation in national standards and national testing would be required as a condition of receiving federal discretionary grant funding under the American Recovery and Reinvestment Act (ARRA) administered by the [U.S. Department of Education]. …
>
> With the release of the [Race to the Top (RttT)] application, it is clear that the first step toward nationalization of our schools has been put into place. I do not believe that the requirements will end with the [RttT]; I believe that [U.S. Department of Education] will utilize the reauthorization of the Elementary and Secondary Education Act (ESEA) to further the administration's federal takeover of public schools. …

> Having the federal government use Washington-based special interest groups and vendors as proxy for the [U.S. Department of Education] in setting national curriculum standards and then using ARRA federal discretionary funds to develop national tests for every child in the nation represents unprecedented intrusiveness by the federal government into the personal lives of our children and their families.[193]

Secretary Duncan describes the process somewhat differently—but one can see that Secretary Duncan and Commissioner Scott are describing the same process. Duncan says that "through Race to the Top," states have created educational plans for the future. "At the heart of all of these plans," Duncan notes, are the Common Core national standards, and the Department of Education has funded select states "to lead the way" with their plans that have the national standards as their basis.[194]

Former Indiana Governor Mitch Daniels, a proponent of the Common Core national standards, compares these curriculum-content standards to the New Math and New Science curricula, funded and promoted by the federal government after the launching of Sputnik.[195]

When Duncan announced the results of round two of the Race to The Top competition, he was eager to call attention to the fact that as a result of RttT, 35 states and the District of Columbia (by that point) had "adopted rigorous common, college- and career-ready standards in reading and math."[196] As policy specialist Joseph Viteritti points out, Duncan's statement suggests that the RttT program had had "a discernible effect."

Viteritti goes on to say that the RttT could "fairly be described" as "an aggressive attempt by the federal government to drive education policy." But also Viteritti says the Obama administration made "a serious effort" to "coordinate" its drive with activities of state officials – activities that I would call cartelizing activities.[197]

In its signature school reform effort, the Race to the Top program, the Obama administration in effect endorsed the national standards and paid for national consortia to develop national tests and curriculum materials based on the national curriculum-content standards. The administration built in adherence to the Common Core and its tests in its original "blueprint" for renewing the Elementary and Secondary Education Act (which has since been superseded by the House and Senate reauthorization bills), and its waivers (to avoid penalties for not meeting No Child Left Behind achievement goals). Yet three federal statutes—the Elementary and Secondary Education Act, the General Education Provisions Act, and the Department of Education Organization Act—forbid such efforts.

But Grover Whitehurst, senior fellow at the Brookings Institution and former chief of educational research in the George W. Bush administration, points out that while the Education Department's RttT program requires adherence to the national standards, the American Recovery and Reinvestment Act (ARRA) stimulus legislation says that the standards must be developed "consistent with section 6401(e)(1)(A)(ii) of the America Competes Act, which authorizes only the support of individual states in their efforts to develop their own standards." That is to say, the combination of the stimulus law and the America Competes Act specify that individual states must create their own individual standards and does not authorize spending in support of national standards.[198]

Does the Difficulty in a State Getting Out of Common Core Indicate Federal Control?

Under the terms of present-day fiscal federalism, once a state accepts a federal conditional spending program, it is, as Michael Greve says, rather difficult to "defect."[199] In fact, a state official is usually not in a political position that realistically allows the official to turn down the offer of the grant, because that state's taxpayers pay for the grants to all of the states whether or not that state is participating. If a given state does

not participate, money is still collected from its inhabitants and simply goes into the pool to be used by the states who do participate. All this is known well enough.[200]

But what isn't as well known is the Department of Education's Common Core Roach Motel. To paraphrase the once-famous advertising slogan, "The states check in, but they don't check out"—at least not without considerable difficulty. Why? Because the national standards are synchronized to preparing students to get passing grades at entry-level courses in community colleges, but to disengage from the Common Core, a state has to pass muster with the federal government by having standards that in practice must ensure that students would get passing grades in the majority of a state's four-year colleges and universities.

Did Federal Deadlines for Creation of Common Core Indicate Federal Control? Did Federal Deadlines for Adherence to Common Core and Testing Consortia Prevent Sufficient Deliberation?

The "stick behind the door" that kept the national-standards writers on deadline during later stages of writing and that goaded the states during the adoption process belonged to the Obama administration's Department of Education. Since the federal stimulus law required that all Race to the Top money be obligated by Sept. 30, 2010, the Department of Education could tell the national standards initiative that its test writers were operating under a deadline.[201] Also, from Lyndon Johnson's success in getting the ESEA rapidly through Congress in 1965 and from the failed Clinton-era attempt to create national tests, the national standards cadre had learned that speed would make it difficult for opponents to organize, and that a measured pace would lead to congressional deliberation and possible defeat.[202] Thus, there was a rush to create the national standards and a forced march to adoption.

The Department of Education's application deadlines for Race to the Top made states hastily consider and adhere to the Common Core national standards. The sixteen states that applied for RttT grants in round one of funding had to commit to adhere to the Common Core by January 19, 2010, even though the standards had not yet even been published. The states who participated in round two had to apply before the standards were published, but they got to see the standards in final form before they committed. These round-two states were allowed only two months to consider the Common Core in comparison with their own state standards and to set forth a detailed plan for implementation.[203] The initiative published the national standards on June 2, 2010; the states had to adhere by August 2.[204] States commonly had taken about two years to create their own state standards. Since the Common Core standards were already in existence, the states did not need two years. But two months was not enough time for consideration of such a transformative curriculum policy. What consideration took place was not during the regular school year when administrators, teachers, and parents might be paying attention to school policy. The forced-march adherence process was not consistent with the deliberation required in a republican form of government.

The standards were written in a hurry (to meet federal deadlines) and were never piloted in any state or locality. Kentucky (where Gene Wilhoit, executive director of the Council of Chief State School Officers had recently been state commissioner of education) adopted the new national standards sight unseen in February 2010, months ahead of their publication.[205]

Educational historian Joel Spring describes how a typical state responded:

> … New York's State Department of Education unquestioningly accepted the federal goals for schools. … [T]he New York state

> education officials never debated the worth of "internationally benchmarked standards and assessments." … Officials just rushed to get the money.[206]

California was likewise in a hurry to try to get Race to the Top funds. Here is how the state's Jan. 19, 2010 application to the Department of Education described the state of California's official attitude to a set of national standards that were not published until June 2 of that year:

> California will strengthen its already high standards by adopting a set of common core standards and by working with one or more consortium of states to develop aligned assessments in mathematics and reading/language arts. …
>
> California is committed to staying the course in its standards-based reform efforts, and therefore has embraced the opportunity to collaborate with other states in developing and adopting a common core set of rigorous standards. …
>
> California enacted legislation on January 7, 2010 that launched the adoption process of common core standards with a goal for adoption by August 2, 2010 … The legislation also specifies that at least 85 percent of the State's standards be composed of the common core standards.[207]

Currently many states are in the educational equivalent of "Marry in haste, repent at leisure." Moreover, to judge from the trend of public opinion, many of their teachers, parents, are not happy about it.[208] Federally-driven haste has made waste.

Why Is There Only One Set of Common Standards Available to States Wishing to Participate in RttT or Receive NCLB Waivers?

In path-breaking investigative reporting for the Washington Post, Lyndsey Layton explained the interconnections between the pro-national-standards Gates Foundation and the Obama administration, in promoting the Common Core.

Layton noted that several leading policymakers in the Obama Education Department came either directly from the foundation when President Obama took office in 2009 or came from entities that received substantial Gates funding.

Layton pointed out that prior to becoming Secretary of Education, Duncan was CEO of the Chicago Public Schools, which was the recipient of $20 million from the foundation to create small schools at the high-school level.

When Duncan became secretary, Layton relates, he appointed as his chief of staff Margot Rogers, a leading Gates Foundation figure whom he met in the course of working on that grant. He also brought on board at the department James Shelton, a program officer at the foundation, to serve initially to preside over grants to promote school innovation and later to serve as the department's deputy secretary.

Under Duncan, the department devised Race to the Top. To compete for a piece of $4.3 billion in grant money states had to promise to institute educational changes. If the states adhered to curriculum-content standards of a certain description (a description that only Common Core could match), the states "stood the best chance of winning" a share of the grant money. It was, in Layton's words, a "clever" maneuver in the face of federal laws—laws that "prohibit Washington from interfering in what takes place in classrooms." It was also too tempting for almost all states to resist in the depths of the Great Recession.

In charge of the department's RttT program was Joanne Weiss, who earlier had been the chief operating officer of the Gates-funded NewSchools Venture Fund.

As the RttT program was being drawn up, the department led by Duncan and the Common Core initiative funded by Gates were, Layton says, "in close coordination."

An early draft of Race to the Top, spoke of the Common Core standards by name, Layton says. It promised that states that "embraced those

specific standards would be better positioned to win federal money." Such explicitness raised concerns with Gene Wilhoit, executive director of the Council of Chief State School Officers, which was co-sponsoring the Common Core. Wilhoit knew that explicit and overt federal endorsement of a set of curriculum standards would hand critics a weapon and would be regarded as illegal by some. He brought the issue up with Weiss.

"I told her to take it out, that we didn't want the federal government involvement," Wilhoit later recounted to Layton. "Those kinds of things cause people to be real suspicious." The words "Common Core" were deleted.[209]

The Obama administration didn't engage in public debate and dialogue with Congress or anywhere else about having one set of national standards or multiple sets. Instead it ensured that there would be only one set of national standards in almost the most obscure, hidden way possible: through the fine-print in its scoring rubric for Race to the Top applications. States would be competitive for funds if they adopted a "common set of K-12 standards" that had been adopted by "a majority of the states in the country."[210] By definition, if a majority of states is needed, there can be only one set that is adopted by that majority. Any set adopted by a minority would put any state that adopted it at a distinct disadvantage.[211] Hence, there came to be only one set of national standards.

For example, in a Department of Education workshop that trained those who would be writers of RttT applications from states, the prospective writers clearly understand that applicants who get the points available for adhering to common standards would have to be in a group having standards adopted by a majority of states. The grant-application writers at the workshop—the transcript shows—all speak of Common Core. While department officials are careful not to formally endorse Common Core, at the same time they acknowledge that signing up for Common Core would necessarily count as meeting the criteria for receiving the points for common standards.[212]

Indeed the Congressional Research Service states:

> It should be noted that aside from the Common Core State Standards, there was no other set of standards being developed by a consortium of states that included enough states to meet the criteria to receive "high" points.[213]

The case of Massachusetts shows both the necessity that states faced of adhering to the Common Core and how the federal government coerced the states into adhering to it. Massachusetts applied in round one of the RttT competition. But it did not receive a grant, indeed, it came in thirteenth out of 16 states, even though Massachusetts had the best record of all the states on education reform.[214] Duncan held a special meeting at Harvard University with Massachusetts Secretary of Education Paul Reville at the time of the announcement of the grant awardees to explain why Massachusetts was not among the winners. In round two of the RttT competition, Massachusetts submitted substantively the same application, with one addition. In round two, Massachusetts certified that it was adhering to the Common Core. This time, it received RttT funding, scoring the highest of all states.

In What Sense Did the States Collaborate in Creating the Common Core? To What Extent Was the Common Core Initiative "State-Led"? Is the Common Core Now a Federally-Led Cartel?

Policy analyst Frederick Hess points to the fact that some state officials must feel that the Obama administration (together with their allies in the national-standards cadre) has performed a "bait and switch." Hess writes that proponents of national standard promised over and over again that participating states "were not signing up for any particular curricula" and that the national

standards initiative would be a multi-state "collaboration' and not a federally-controlled endeavor. Participating states were told they "were not making any grand commitments—but were carefully boarding a slow-moving train and could choose to ride or disembark as they saw fit."

Hess continued that there are policymakers in the states who were "fine" with "more common standards and metrics" but who "never imagined" that by endorsing the Common Core national standards they were "thereby signing onto national curriculum frameworks, national content, and a 21st century 'one best system.'"[215] In other words, some state officials may have fallen for the localism illusion fostered by the Common Core initiative's rhetoric. They may not have realized that under the current rules of fiscal federalism, once you enter the cartel that is policed and subsidized by the federal government it is quite hard to leave.

It should be noted that although the California RttT application, for example, speaks of collaborating with other states, the standards-writing process was not one of state delegates working together. Reading the phrase "state-led," one might think that governors or state legislators had run for office promising multi-state standards and that after state leaders were elected on this platform, state legislatures around the country passed laws appointing delegates to a conference that debated the content of the national curriculum standards in public.[216]

But, in truth, when the states signed up to "collaborate," just about all the states obtained was the right to nominate persons to a review committee—persons whom the managers of the Common Core initiative often did not accept. This is a rather minimalist meaning of "collaboration."

The proponents of the Common Core national curriculum-content standards stress that the national standards have been conceived immaculately and produced completely outside the federal government, although encouraged by it. Adopting them, the story goes, is entirely voluntary, though again encouraged by the federal government. Chester Finn, for example, writes that the national standards "emerged not from the federal government" but from "a voluntary coming together of (most) states." Concerning adoption of the national standards, Finn writes similarly that the states' decision whether or not to adopt them or continue to adhere to them "will remain voluntary."[217] At the same time, national-standards advocates have wanted in the Obama era to combine these national standards with federally-required accountability testing by the national testing consortia, with member-states having shared proficiency cut-points.

The problem with this "immaculate deception" narrative is that the national-standards proponents know it is incomplete and misleading. In "National Education Standards: Getting Beneath the Surface," a well-known 2009 paper, Paul Barton wrote:

> If the idea is to have a set of nonfederal, national standards along with national tests and to incorporate the standards into an NCLB-type arrangement where the test is required in a sanctions-based system, the test would, by default, become federalized, regardless of how it was developed.[218]

Proponents of national standards have long known of the potential for such federal control through national tests. Chester Finn, for example, wrote in the 1990s that there should be national tests, but he wished that they themselves should have "no stakes," that is "no consequences," "at the national level."[219] If there were to be national tests, Finn said, there must be "no government entanglement or federal funds."[220]

In the plans of the Obama administration, the Common Core national standards do not escape the sin of federal control—they are now a collaboration among the states, policed by the federal government. As of this writing and in the plans of the Obama administration, the Department of Education is actively shaping

the curriculum of schools nationwide. The distinction between the Obama program and past grants for development of curriculum materials or funding to develop national standards or tests, is that, in the Obama program, Department of Education policies incorporate (as Barton presciently predicted) the Common Core standards and the new tests in the required testing regime of NCLB (and whatever the successor law to NCLB is). The claims of true voluntarism are an "immaculate deception," and the Obama administration's plans result in federal control of testing based on what were in effect federally-endorsed curriculum-content standards—linked with federally-sponsored curriculum frameworks and materials.

The Obama administration's approach has been one of collaborating with those state officials who want national curriculum-content standards. The administration has funded the creation of the national tests and of curriculum materials aligned with the national tests and standards. It has ginned up demand through its Race to the Top stimulus grants and even more coercively through its conditions for waivers to the sanctions of NCLB. It sought to lock in the national standards and tests by making them part of ESEA in its new authorization – this goal was set forth in the Obama administration's blueprint for a reauthorized ESEA. In mid-February 2010, President Obama gave a speech in which he proposed to tie Title I spending and federal competitive grants to adherence to the Common Core national curriculum-content standards and emphasized that "this administration is serious" about such a requirement.[221]

States would be "hard-pressed," as Patrick McGuinn puts it, if they turned down "the millions (and often hundreds of millions)" in annual federal aid to education.[222] Hence the threat from the Department of Education is the department's taking away that aid. In the words of Cato Institute's Neal McCluskey, the administration's blueprint for reauthorizing ESEA would have made the national standards the law's accountability backbone."[223] The executive director of the National School Boards Association, Anne Bryant, commented that the Obama administration's approach amounted to "an unnecessary over-reach" by the federal government in an effort "to coerce states to adopt a particular approach or be shut out of future funding for key programs."[224]

The best way to understand the national curriculum-content standards and their tests is as the formation of a national educational cartel by these state education officials (policed by the federal government), with the aim of suppressing competition among the states over standards of curriculum content and levels of performance on tests.[225] This analysis can be found in the comment of South Carolina Governor Nikki R. Haley, who wrote that South Carolinians should not "relinquish" control of education to the federal government, nor should they "cede" control to "the consensus of other states."[226]

Part of the cartel agreement is that it leaves fifteen percent of the content under the control of state education officials, so that they remain politically relevant and share power in this area. As well, the participation of and seal of approval from state officials creates a localism illusion, which helps convince parents and state and local taxpayers that the state government retains control of the curriculum.

This is what legal scholar Michael Greve calls an "intergovernmental conspiracy" or "intergovernmental collusion."[227] The Common Core national standards will mean that there will no longer be a challenge by Massachusetts and California to Florida over the latter's weak content-standards. Massachusetts and California will no longer have better tests than Florida's. For that matter, Massachusetts will no longer have higher grading standards than California. Texas will no longer have an incentive to improve its standards to improve the state's reputation.

The scholarly literature in social science says that officials in sub-national governments may well seek centralization in order to impose homogeneity (at their level of government)

and thus to tamp down inter-jurisdictional competition.[228]

Richard A. Epstein and Mario Loyola write that as the distinction in law between local and national activities has eroded, federal and state officials have an incentive "to collude in blocking competition." The effect can all too easily be—when state and federal education officials, for example, make use of this tempting ploy—"to eliminate the discipline" that programmatic and accountability competition would "impose on multiple governments." That competition would have had a chance to work in a true federalist system "when each is confined to its distinct sphere of authority." But if state and federal officials collude, they "replace" competition between the states (in this case, in educational offerings) with an "anti-competitive cartel."[229]

Nationalizing standards and tests would, according to this analysis, eliminate them as differentiated school-reform instruments that could be used by states in competition over educational attainment among the states. Sonny Perdue (governor of Georgia at the time Common Core was created) did not like comparisons of the low-performing students of his state with students in other states that had different standards from Georgia's.[230] He became the lead governor in bringing the National Governors Association into the national standards effort.[231] (In 2013, the governors' association acted in similar fashion to create a cartel of states in order to suppress competitive federalism and make online retailers collect taxes from out-of-state customers.)[232]

Common Core blocks the availability of "exit" options to states, schools, and parents and undermines competitive federalism. Indeed, in part, it was designed to do so. During the adherence process, Common Core likewise evaded and negated the political participation and deliberation that are part of a republican form of government – and it continues to do so. The designers of Common Core wanted nationwide uniformity. Because of boilerplate memorandums of understanding, states must adhere to the Common Core *in toto*. A few topics can be added, but none can be subtracted or moved to a different grade.

The Common Core national standards and tests close the door on competition and also the competitive dynamic that leads to continuous innovation and improvement.

Are the Federally-Funded National Testing Consortia Part of a System of Federal Direction and Control of State K-12 Policy?

Once one has national testing, a national curriculum is inevitable. If you are creating national tests for all students, you can't just read off of the standards (a list of topics) precisely what should be the test items. For example, what if you had 20 content standards and room for 40 items on the test. Do you have two test items on each standard? Or do you reserve four items for an important standard?[233]

Testing specialist Richard Innes points out that "it's not possible" to create sound state assessments "without considering the curriculum." If you don't keep curriculum in mind, you end up with tests "that don't measure what is taught" and, as well, tests that don't measure what should have been in the curriculum and taught.[234]

Former Colorado Governor Roy Romer has candidly acknowledged it as well. Romer is a longtime advocate for national standards and was a longtime promoter of the 1989 National Council of Teachers of Mathematics's national math standards, which he used to carry everywhere and laud as "the best thinking in the country."[235] He says it is essential that national standards and tests avoid being labeled "a federal program." But, he says, "we are at a very tricky stage." The testing consortia cannot write the tests "without setting some sequencing and definition of curricula."

However, speaking of a nationwide "curriculum" in public is taboo for proponents of the national standards. Governor Romer acknowledges: "The interesting thing in all this debate is that we can't use this word. Everybody is not speaking the truth but is dodging the truth."[236]

In September 2010, the Department of Education awarded $330 million in grants for the creation of national tests. As in the Clinton era, the Department of Education awarded the grants, as Chester Finn put it in the time of Clinton, "without congressional approval or independent oversight."[237] Both of the testing consortia that received federal grants included commitments in their proposals that they would develop national curriculum materials. "Key" writers of the national standards were subsequently on payroll to write the federally-funded national tests.[238]

As the Congressional Research Service writes:

> Both the PARCC and Smarter Balanced consortia are using the Common Core State Standards as the common standards to which their assessments will be aligned. All states associated with these consortia are required to use the standards to which the assessments are being aligned and to adopt the assessments being developed by the consortium to which they belong. …
>
> [T]he availability of RTT funding to develop the assessments may be further incentivizing the adoption and implementation of the Common Core State Standards and aligned assessments. …[239]

Shortly before the Obama administration took office, Lauren Resnick and her colleagues outlined a strategy for systemic alignment of assessments and standards. They sought a "political and technical process" that links standards and tests. Tests and standards, they say "must be linked from the start."[240] Such linkage of tests and standards would have the power to set the curriculum. We will need," they say, to "stop pretending" that curriculum is a separate matter from standards-setting.[241] (The pretending goes on in the rhetoric of the Obama administration and other defenders of Common Core. But the reality is that linkage exists between curriculum and the Obama-era national tests and standards.)

When Education Secretary Duncan announced the department's grants to the testing groups on September 2, 2010, he pointed enthusiastically to one group "developing curriculum frameworks and ways to share great lesson plans" and the other group developing "instructional modules."

Later, when the department had additional discretionary funds available, it gave the consortia further money for developing curriculum materials.[242] The new national curriculum will be designed to complement the federally-funded national testing system that the consortia has also been designing.[243]

How is the federal government ensuring that the national tests are under its control and will be appropriate to police the implementation of the Common Core in the classroom? The Obama administration has designated a slot for a program officer in the Department of Education who has the authority to tell the national testing consortia activity what they must do if "outcomes are inconsistent with the intended project outcomes."[244] In addition, the Department of Education established in March 2013 a technical review board to judge the assessments then being created by the two testing consortia and "[identify] how we can better partner with the consortia during this critical development phase."[245]

Linda Darling-Hammond is a professor at Stanford's School of Education and senior research adviser to Smarter Balanced, one of the national testing consortia. She says it is "*especially important*," if you want to remake the American system of public education to "rethink" testing.[246] In an interview, Darling-Hammond said she plans to use the new national tests to drive the curriculum and to do so in a way that imposes a Progressive Education-style critical-thinking curriculum:

> **Lynette Guastaferro:** In a recent speech, you mention several high performing school systems in other countries organizing their curriculum around problem solving and critical thinking skills. Would you say the US is moving in that direction with the adoption of Common Core standards?
>
> **Darling-Hammond:** [T]here is certainly a lot of good language in the Common Core about critical thinking skills and problem solving and so on. … *[E]specially important*, if you look at the US in relation to other countries is rethinking the testing system. We're the only major country that uses multiple-choice testing to a large degree; all of the high-achieving countries test much less than we do, test almost exclusively in open-ended formats with writing and *performances*, scientific investigations, research papers, and projects as part of the examination systems.
>
> **Guastaferro:** So assessment is the really critical structure that we have to get right? ...
>
> **Darling-Hammond:** … [I]n our two new assessment systems, we may have extended tasks that last one or two days or class periods. If you were in Singapore, in nearly every science class you would have a several-month scientific investigation that students design, conduct, and analyze... And those kinds of expectations for students mean that students are continuously being asked to think, to analyze, to synthesize, to communicate, to evaluate, … to frame and solve problems.
>
> **Guastaferro:** I agree that good assessment is the lynch-pin to developing students higher order skills — but what about accountability? ...
>
> **Darling-Hammond:** Used well, assessments can be a part of a very powerful instructional improvement system and an accountability system where the goal is to be transparent about what kind of outcomes we are getting. The tests have to be worth teaching to, the outcomes have to be the right ones, the process has to engage teachers in ways that makes them *smarter* about their teaching. …

Darling-Hammond, who has played a central role in creating the Smarter Balanced national test, says that she likes the fact that Common Core pushes a "critical thinking" and "problem solving" curriculum. She thinks the most important leverage people like her have when it comes to changing teaching practices is making use of "the testing system" to reshape teaching – something she has been in a position to do.

Another technical specialist Jeff Nellhaus, chief of assessment for the other national testing consortia , the Partnership for Assessment of Readiness for College and Careers (PARCC), emphasizes that tests send a signal to teachers and their supervisors.

> What the test measures and how it measures it is going to have an impact on what [teachers] teach and how they teach it.[247]

Is There an Alternative Macro Approach to School Improvement? Since Common Core Suppresses Competitive Federalism, Can Reviving It Contribute to Improvement?

Looking at other countries, there is no reason to believe that a national curriculum leads to better results. For example, some countries that are culturally similar to the United States and set their curriculum at the provincial level—such as Australia and Canada—do better academically than the United States. Other countries with cultures similar to the United States that set their curriculum at the national level—such as Denmark and France—do not do particularly well.[248]

By the time push for national standards revived around 2006, proponents alleged that state performance standards were on a "race to the bottom."[249] The problem with allegations of "races to the bottom"—which is a favorite rhetorical trope that goes back to the New Deal era—is that they turn out not to be true empirically. Some claimed that there would be a "race to the bottom," for example, on state provision of relief to the poor and on state conservation and environmental policy. But the facts belie their claims.[250]

The fact is that in a federal system there are countervailing pressures. For though there are pressures on state policymakers to do less, there

are also countervailing pressures to do more—no matter what the issues. States are differently situated in terms of conditions in the states, so it should not be shocking, as some find it, that states have different policies and different results. States in America's federal system are not mere geographically-bounded administrative units—prefectures—that receive assignments from on high to carry out locally. States are centers of power with their own basis in American political life and in the American constitutional structure.

A state policymaker has to take into account—in K-12 public education, for example—not only the challenge for teachers and school administrators of content and performance standards that are high, but also what the effect would be of standards that are low. Low standards would:

- Damage the state's reputation for having a trained workforce;
- Damage the reputation that the state had for the quality of life in the state; and
- Damage the personal reputations of the state public officials who were responsible for the low standards.

When the "race to the bottom" notion was exploded and shown not to be what was happening in state performance standards, the argument shifted, and the claim became that national planning and evaluation of education would not work with the variety of testing systems and performance standards that come with a federal system. Hence, performance standards had to be uniform across the country, and, it was further claimed, such uniformity had to be accomplished via national testing and standards.[251]

Competitive federalism is the alternative to top-down, one-size-fits-all uniformity and to cartels led by and policed by the federal government.[252]

Competitive federalism is horizontal competition among jurisdictions.[253] We know that it works in education at the inter-district level. Economist Caroline Hoxby studied metropolitan areas with many school districts (like Boston) vs. metropolitan areas contained within one large district (like Miami or Los Angeles). She found that student performance is better in areas with competing multiple districts, where parents at the same income level can move—at the margin—from one locality to another nearby, in search of a better education for their children.[254]

We have seen competitive federalism work in education at the inter-state level. Back in the 1950s, Mississippi and North Carolina were at the same low level. Over the years, North Carolina tried a number of educational experiments and moved well ahead of Mississippi. We have likewise seen Massachusetts move up over the years from mediocre to stellar (though under Common Core, Massachusetts is sinking back again).[255]

A goal, however, of those who promote the Common Core is to suppress competitive federalism. The Common Core's curriculum guidelines and its rules are the governing rules of a cartel. The goal of Common Core's designers and proponents has been curriculum uniformity, as opposed to having a variety of state and local curriculums. They and their federal facilitators wanted a cartel that would override competitive federalism and shut down the curriculum alternatives that federalism would allow. The new Common Core-aligned national tests, whose development was supported with federal funds, are to police the cartel. All long-lasting cartels must have a mechanism for policing and punishing those seen as "shirkers" and "chiselers," in order words, those who want to escape the cartel's strictures or who prefer increased flexibility.

The evidence, however, does not support the claim that competing jurisdictions are naturally disposed to engage in a "race to the bottom." For policymakers, the logic of pursuing a "race to the bottom" doesn't make sense either. While providers of public education certainly face the temptation to do what might look like taking the easy way out by letting academic standards

decline, there is also countervailing pressure in the direction of higher standards (especially, as long as there are competing standards in other states).

If policymakers and education officials let content standards slip, low standards will damage the state's reputation for having a trained workforce. Such a drop in standards will even damage the policymakers' own reputations.

In 2007, the Thomas B. Fordham Institute looked empirically at state performance standards over time in a study called *The Proficiency Illusion*. The study showed that while states had a variety of performance standards (as would be expected in a federal system), the supposed "race to the bottom" was not happening.[256] The proponents of the Common Core are wrong (or, sometimes, even intentionally misleading) in their claims that state performance standards were inevitably and everywhere on a downward slide.

Why is this important? Because a principal argument for national curriculum-content standards is that without nationalization there will be a "race to bottom" and that only national standards can reverse a supposedly already-existing slide. But the facts suggest otherwise. This topples a principal argument for national standards.

About the Author

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Endnotes

1. Elementary & Secondary Education Act (ESEA), 20 U.S.C. §§ 7907(a) & (b); General Education Provisions Act (GEPA), 20 U.S.C. § 1232a; Department of Education Organization Act of 1979 (DEOA), 20 U.S.C. § 3403(b). The No Child Left Behind Act (NCLB) added a further prohibition: "Notwithstanding any other provision of Federal law, no state shall be required to have academic content or student achievement standards approved or certified by the Federal Government, in order to receive assistance under this Act." 20 U.S.C § 7907(c).
2. Secretary Arne Duncan, Beyond Bubble Tests: The Next Generation of Assessments, Remarks to State Leaders at Achieve's American Diploma Project Leadership Team Meeting (Sept. 2, 2010), http://www.ed.gov/news/speeches/beyond-bubble-tests-next-generation-assessments-secretary-arne-duncans-remarks-state-leaders-achieves-american-diploma-project-leadership-team-meeting. Both national assessment consortia had through-course testing in their original proposals. *See* U.S. Dep't of Educ., Race to the Top Assessment Program: Application for New Grants Comprehensive Assessment Systems: Submitted by Washington State, on behalf of the Smarter Balanced Assessment Consortium 33, 37-38, 41, 42 (2010), http://www.smarterbalanced.org/wordpress/wp-content/uploads/2011/12/Smarter-Balanced-RttT-Application.pdf; U.S. Dep't of Educ., Partnership for Assessment of Readiness for College and Careers (Parcc), Application for the Race to the Top Comprehensive Assessment Systems Competition 35, 36, 45 (2010), http://www.parcconline.org/sites/parcc/files/PARCC%20Application%20-%20FINAL.pdf.
3. This is the U.S. Department of Education's Assessment Technical Review Process panel. All panelists are known supports of Common Core, and three are also members of consortia technical-advisory panel. Catherine Gewertz, *Common-Assessment Groups to Undergo New Federal Review Process*, Education Week's Curriculum Matters Blog (April 1, 2013), http://blogs.edweek.org/edweek/curriculum/2013/04/common_assessment_groups_to_undergo_new_federal_review_process.html.
4. Timothy Shanahan, Expert Report, *Jindal v. United States Department of Education* et al., No. 14-CV-534 (M.D. La), at 3, 7.
5. *Id.* at 8, 10, 16.
6. On the importance of the academic field of alignment research, see U.S. Dep't of Educ., Evaluation of the National Assessment of Educational Progress: Study Reports, at ch. 6 (2009), *available at*, http://www2.ed.gov/rschstat/eval/other/naep/naep-complete.pdf.
7. See, for example, U.S. Dep't of Educ., Standards and Assessments: Non-Regulatory Guidance (2003), available at http://www2.ed.gov/policy/elsec/guid/saaguidance03.doc. See also U.S. Dep't of Educ., Office of Elementary & Secondary Educ., Standard and Assessments: Peer Review Guidance: Information and Examples for Meeting Requirements of the No Child Left Behind Act of 2001, at 50-59 (rev. Jan. 12, 2009) (explaining what is meant by alignment and give detailed specifics on what states need to do operationally to obtain federal approval), *available at* https://www2.ed.gov/policy/elsec/guid/saaprguidance.pdf.
8. Derek W. Black, Expert Report, *Jindal v. United States Department of Education* et al., No. 14-CV-534 (M.D. La), at 8.
9. Derek W. Black, *Federalizing Education by Waiver?* 68 Vand. L. Rev. 607 (2015).
10. 74 Fed. Reg. 59,836 (Nov. 18, 2009); U.S. Dep't of Educ., Race to the Top Program: Executive Summary 2 (2009), available at http://www2.ed.gov/programs/racetothetop/executive-summary.pdf.
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12. On the influence of Tyler's book, see *id.*
13. Ralph W. Tyler, Basic Principles of Curriculum and Instruction 1 (rev. ed. 2013) (1949).
14. *Id.* at 104-25.
15. See Eugene T. Smith, Ralph W. Tyler and the Evaluation Staff, Appraising and Recording Student Progress (1942).The details are set forth in Wilford M. Aikin, The Story of the Eight-Year Study, with

Conclusions and Recommendations 87-101(1942); James Hemming, Teach Them To Live 89-104 (1948); J. Thomas Hastings, *Tyler's Behavioral Objectives: Background Sources, Early Use, and Some Stream-Offs*, in Improving Inquiry In Social Science: A Volume In Honor of Lee J. Cronbach 305-324 (Richard E. Snow & David E. Wiley, eds., 1991); Craig Kridel & Robert V. Bullough Jr., Stories of the Eight-Year Study: Reexamining Secondary Education in America 71-96 (2007).

16. Benjamin S. Bloom et al., Taxonomy of Educational Objects: The Classification of Educational Goals, Handbook I: Cognitive Domain (1956), at 185-200.
17. *Preface*, in Bloom's Taxonomy: A Forty-Year Retrospective, Ninety-Third Yearbook of the National Society for the Study of Education, pt. 2, vii (Lorin W. Anderson & Loren A. Sosniak, eds, 1994).
18. McClure, *supra* note 11, at 51.
19. Michael W. Kirst, *Policy Implications of Individual Differences and the Common Curriculum*, in Individual Differences and the Common Curriculum, Eight-Second Yearbook of the National Society for the Study of Education, pt. 1, 282, 285-286, 289-290 (Gary D. Fenstermacher & John I. Goodlad, eds, 1982).
20. Jennifer A. O'Day & Marshall S. Smith, Systemic Reform and Educational Opportunity, in Designing Coherent Education Policy: Improving the System 250, 265-69, 300 n. 2 (Susan H. Fuhrman ed., 1993); *see also* Chester E. Finn Jr., Troublemaker: A Personal History of School Reform since Sputnik 150-51 (2008); Maris A. Vinovskis, from *A Nation At Risk* To *No Child Left Behind*: National Education Goals and the Creation of Federal Education Policy 58, 68-69 (2009).
21. Melinda Malico, *Marshall (Mike) S. Smith Retires (Again) from ED*, Homeroom (Blog), US Department of Education, May 26, 2010, http://www.ed.gov/blog/2010/05/marshall-mike-s-smith-ph-d-retires-again-from-ed/.
22. U.S. Dep't of Educ., Standards and Assessments: Non-Regulatory Guidance, *supra* note 7, at 12. The Congressional Research Service writes: "[C]urriculum…can mean anything from lesson plans to textbooks to frameworks that can be generated at the state or local level or purchased off the shelf. In general, however, the development and use of curriculum is part of the process for operationalizing state standards. According to ED, 'A curriculum aligned with the State's standards is necessary for students to achieve and demonstrate proficiency on a State's tests.' Thus, according to the U.S. Department of Education, while standards and curriculum are different concepts, the alignment of standards and curriculum is needed for students to demonstrate proficiency on state assessments, which are required to be aligned with the standards." R. R. Skinner & J. Feder, Common Core State Standards and Assessments: Background and Issues (Washington, DC: Congressional Research Service, 2014): CRS-6.
23. Peter W. Wood, *Why the Common Core is a Bad Idea*, in Sol Stern & Wood, Common Core: Yea & Nay 11 (2014).
24. The Common Core standards address similar and congruent triangles, and the curriculum must address the topic in the same manner that the standards do. If the standards say to solve these geometry problems using exclusively the concept of "rigid motions," the curriculum cannot teach the topic using the approach of angle-side-angle and side-angle-side. Furthermore, the national tests will surely demand that student use "rigid motions" in solving problems on the tests. Standard G-CO-7 states "Use the definition of congruence in terms of rigid motions to show that two triangles are congruent if and only if corresponding pairs of sides and corresponding pairs of angles are congruent." It does not leave the method of proof to the teacher, as it would by simply stating "Prove conditions necessary for triangle congruence." For another math example, Common Core's second grade math standard 2.NBT.7 is highly prescriptive and reads: "Add and subtract within 1000, using concrete models or drawings and strategies based on place value, properties of operations, and/or the relationship between addition and subtraction; relate the strategy to a written method. Understand that in adding or subtracting three-digit numbers, one adds or subtracts hundreds and hundreds, tens and tens, ones and ones; and sometimes it is necessary to compose or decompose tens or hundreds." Contrast that with California 1997 second grade standard 2.NS.2.2, which avoids prescriptiveness and simply says: "Find the sum or difference of two whole numbers up to three digits long." Similarly, Common Core English and Language Arts standards (page 5) offer a table showing the intended split between literary and informational texts in various grades—varying from 50:50 in grade 4 to 30:70 in grade 12—and go on to say "[t]he Standards aim to align instruction with this framework." Clearly, prescribing assignment of instructional time in the classroom is not about the "what" but about the "how."

25. Google searches display many examples of these phrases. For example, Alan J. Borsuk, *What Gets Tested Gets Taught*, Milwaukee Journal-Sentinel, July 25, 2007, http://www.jsonline.com/blogs/news/31975054.html.

 For a scholarly treatment of this issue, see George F. Madaus, *The Influence of Testing on the Curriculum, in* Critical Issues in Curriculum, Eighty-Seventh Yearbook of the National Society for the Study of Education, pt. 1, 83 (Laurel Tanner ed., 1988).

26. W. James Popham et al., *Measurement-Driven Instruction: It's on the Road*, Phi Delta Kappa (May 1985), at 628, 629.

27. Diane Ravitch, Edspeak: A Glossary of Educational Terms, Phrases, Buzzwords, and Jargon (2007). The Association for Supervision and Curriculum Development was formed in 1941 through the merger of the Society for Curriculum Study and the National Education Association's Department of Supervision and Directors of Instruction.

28. *Id.* at 209.

29. *Id.* at 58.

30. *Id.* at 21.

31. *Id.* at 114-115.

32. *Id.* at 8.

33. *Id.* at 21-22.

34. *Id.* at 17.

35. Thomas A. Bailey, The American Pageant 992 (5th ed. 1975), *cited in* William Harry Robinson, An Analysis of the Relationship Between Federal Education Legislation and Identifiable Economic, Political, or Social Crises in the United States 106 (May 1977) (Ph.D. dissertation unpublished in print) (available electronically http://escholarshare.drake.edu/handle/2092/921).

36. Robinson, *supra* note 35, at 21; see also Gareth Davies, *Education Policy from the New Deal to the Great Society: The Three Rs – Race, Religion and Reds*, in Conservatism and American Political Development 86, 103-04 (Brian J. Glenn & Steven M. Teles eds., 2009); Joel Spring, Conflict of Interests: The Politics of American Education 2 (5th ed. 2005); Barbara Clowse, Brainpower for the Cold War: The Sputnik Crisis and National Defense Education Act of 1958 (1978); Patrick J. McGuinn, No Child Left Behind and the Transformation of Federal Education Policy, 1965-2005, at 28 (2006); David J. Hoff, The Race to Space Rocketed NSF Into Classrooms, Educ. Week, May 19, 1997, http://www.edweek.org/ew/articles/1999/05/19/36nsf.h18.html?qs=NSF+Cold+War.

37. **See, e.g.**, Barry M. Goldwater, The Conscience of a Conservative 76-77 (C. C. Goldwater ed., 2007). Senator Goldwater penned similar concerns when the National Defense Education bill was reported out of committee, in 1958: "This bill and the foregoing remarks of the majority remind me of an old Arabian proverb: If the camel once gets his nose into the tent, his body will soon follow. If adopted, this legislation will mark the inception of aid, supervision, and ultimately control of education in this country by Federal authorities." Sen. Rep. 2242, 85th Cong., 2d. Sess., at 55 (1958) (on S. 4237, "National Defense Education Act of 1958," report published Aug. 8, 1958), *cited in* Davies *supra* note 36, at 105; see also Neil P. McCluskey, Feds in the Classroom: How Big Government Corrupts, Cripples, and Compromises American Education Paperback 21 (2007); Patrick McGuinn, *Education Policy from the Great Society to 1980: The Expansion and Institutionalization of the Federal Role in Schools*, *in* Conservatism and American Political Development 188, 193 (Brian J. Glenn & Steven M. Teles eds., 2009 [hereinafter McGuinn, *Education Policy*]. Throughout his political career, Goldwater opposed federal aid to K-12 education, because, he said, it would "inevitably" lead to "bureaucratic Federal control of school curricula." Barry M. Goldwater, Where I Stand 43 (1964).

38. National Defense Education Act, P.L. 85-864; 72 Stat. 1580, quoted in Spring, Conflict of Interests, *supra* note 36, at 3; *see also* Mary Campbell Gallagher, *Lessons from the Sputnik-Era Curriculum Reform Movement: The Institutions We Need for Educational Reform, in* What's At Stake In The K-12 Standards Wars: A Primer for Policy Makers 281, 307 n.14 (Sandra Stotsky ed., 2000).

39. Jon Schaffarzick, *Federal Curriculum Reform: A Crucible for Value Conflict*, in Value Conflicts and Curriculum Issues: Lessons from Research And Experience 1, 14 (Jon Schaffarzick & Gary Sykes eds., 1979).
40. See Peter B. Dow, Schoolhouse Politics: Lessons from the Sputnik Era 199-217 (1991); Schaffarzick *supra* note 39, at 3, 8-11; George Weber, *The Case Against Man: A Course of Study*, 57 Phi Delta Kappan 81 at 81-82 (October 1975).
41. James J. Kilpatrick, *Is Eskimo Sex Life a School Subject?*, Boston Globe, Apr. 2, 1975, quoted in Dow, *supra* note 40, at 207.
42. On "Man: A Course of Study," an elementary-school social-studies curriculum funded by NSF, see Susan M. Marshner, Man: A Course of Study – Prototype for Federal Textbooks? (1975); Dorothy Nelkin, Science Textbook Controversies and the Politics of Equal Time 104-23 (1977); Karl C. Priest, Protester Voices: The 1974 Textbook Tea Party (2010); Diane Ravitch, The Troubled Crusade 264 (1983).
43. "How one engineers discovery so that it takes place in a context of problem solving." Man: A Course of Study, Seminars for Teachers 15 (1970), *cited in* Marshner, *supra* note 42, at 17. George Weber, associate director of the Council for Basic Education, said that "there is an air of indoctrination about the course," in part because the course designers had "definite ideas about what conclusions the children should come to." George Weber, *The Case Against Man: A Course of Study*, 57 Phi Delta Kappan 81 (October 1975).
44. *See* Michael Bowen, The Roots of Modern Conservatism: Dewey, Taft, and the Battle for the Soul of the Republican Party 52-54 (2011); Russell Kirk & James McClellan, The Political Principles of Robert A. Taft 139-42 (1967); *see also* Senator Robert A. Taft, The Sound Basis for Federal Aid to Education, Address to the American Association of School Administrators (March 6, 1947), *in* 3 The Papers of Robert A. Taft 252-59 (Wunderlin et. al. eds., 2003).
45. 94 Cong. Rec. 3347 (1948) (remarks of Sen. Taft).
46. For discussion of efforts of Taft's and other conservatives' efforts to increase federal aid to education, see Davies, *supra* note 36, at 91. For a present-day conservative's criticism of Taft's effort, see George F. Will, *A Federal Takeover of Education*, Wash. Post, Sept. 30, 2011.
47. Patrick McGuinn, *Education Policy, supra* note 37, at 194-98; Hugh Davis Graham, The Uncertain Triumph: Federal Education Policy in the Kennedy and Johnson Years 61, 73 (1984); Christopher T. Cross, Political Education: National Policy Comes of Age, 22-26, 82 (rev. ed. 2010).
48. McGuinn, *Education Policy, supra* note 37, at 196; see also Graham, *supra* note 47, at 78; McCluskey, *supra* note 37, at 41. As Eric F. Goldman describes it: "LBJ made his wish … unmistakably clear. The education bill was to be put through with force-draft speed just short of provoking a congressional revolt. …" Goldman, The Tragedy of Lyndon Johnson, at 301 (1969).
49. McCluskey, *supra* note 37, at 42.
50. *Id.*; Francis Keppel, The Necessary Revolution in American Education 84 (1966); Beryl A. Radin & Willis D. Hawley, the Politics of Federal Reorganization: Creating the U.S. Department of Education 137 (1988); David Stephens, *President Carter, the Congress, and NEA: Creating the Department of Education*, 98 Pol. Sci. Q. 64, 651-52, 654; Spring, *supra* note 36, at 3.
51. From 1867 to 1868, there was a stand-alone, sub-cabinet U.S. Department of Education. The bill to create the department was sponsored by Rep. James A. Garfield (later President). The department was a place for gathering and disseminating statistical data, and nothing more. Garfield warned against giving the department "power to dictate text-books, schoolhouses, teachers, and every minutiae of the work of education." Allan Peskin, *The Short Unhappy Life of the Federal Department of Education*, Pub. Admin. Rev., Nov.-Dec. 1973, at 572, 573.
52. Cross, *supra* note 47, at 61; Lawrence J. Mcandrews, The Era of Education: The President and the Schools, 1965-2001, at 39 (2006); Radin & Hawley, *supra* note 50, at 39-42; Stephens, *supra* note 50, at 644, 662.
53. Joseph A. Califano Jr., Governing America: An Insider's Report from the White House and the Cabinet 271, 273-74, 277-78, 315-16 (1981).
54. *Id.* at 273.
55. *Id.* at 315.

56. 124 Cong. Rec. 299 (1978) (remarks of Sen. Schmitt).
57. Dissenting Views Accompanying H.R. 13778 (August 25, 1978), at 45-47, *quoted in* Radin & Hawley, *supra* note 50, at 124.
58. S. Rep. No. 96-49, at 15 (1979), *quoted in* Stephens, *supra* note 50, at 654.
59. 125 Cong. Rec. 13,953 (1979) (remarks of Rep. Dodd).
60. 125 Cong. Rec. 13,953 (1979) (remarks of Rep. Quillen).
61. H. R. Rep. 96-143, at 14 (1979).
62. 125 Cong. Rec. 13,961 (1979) (remarks of Rep. Horton).
63. 125 Cong. Rec. 13,961 (1979) (remarks of Rep. Walker).
64. The Federalist No. 60 (James Madison) (Jacob E. Cooke ed. 1961).
65. Jefferson: [I]t would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is every where the parent of despotism; free government is founded in jealousy and not in confidence; it is jealousy & not confidence which prescribes limited constitutions to bind down those whom we are obliged to trust with power." Thomas Jefferson, *Jefferson's Draft* [of the Kentucky Resolutions], The Papers of Thomas Jefferson, vol. 30: 1 January 1798 to 31 January 1799 536 at 540 (2003).
66. 125 Cong. Rec. 13,961 (1979) (remarks of Rep. Horton).
67. There are a small number of federally-operated schools (serving distinct groups of students who are entangled with the federal government), in which federal agencies do set the curriculum: the Department of the Interior's Indian schools and the Department of Defense's schools for military dependents. Neither of these groups of schools have ever been part of the U.S. Department of Education. Cross, *supra* note 47, at 62-64.
68. Graham, *supra* note 47, at 206.
69. Martin T. Katzman & Ronald S. Rosen, *The Science and Politics of National Educational Assessment*, 71 Teachers C. Rec. 571, 576 (1970).
70. Harold Howe II, *LBJ as the Education President*, in The Presidency and Education 99, 118 (Kenneth W. Thompson ed., 1990).
71. Califano, *supra* note 53, at 297.
72. *Id.; see also id.* at 298. Representative William S. Moorhead (D-Pa.) had a similar concern that Department of Education activities could result in federal control of ideas: "To me, the creation of this Department [of Education] provides a potential for a centralization of the control of ideas, a potential which may or may not be realized, but one which will be latent for as long as the Department exists. And, as we all know, where there is potential for a thing to be done, they are eventually people who attempt to realize that potential for whatever purposes – good or evil." H. R. Rep. 96-143, at 59-60 (1979), cited in Lee W. Anderson, *The No Child Left Behind Act and the Legacy of Federal Aid to Education*, 13 Educ. Pol'y Analysis Archives, Apr. 4, 2005, at 1, 11.
73. Nat'l Acad. of Educ., Comm. on Testing and Basic Skills, Improving Educational Achievement 12 (1978). The report acknowledged that there was a place for federally funded technical assistance on testing so long as variety and pluralism were maintained.
74. Paul E. Barton, National Education Standards: Getting Beneath the Surface 3 (2009); *see also* Lorraine M. McDonnell, *No Child Left Behind and the Federal Role in Education: Evolution or Revolution?*, 80 Peabody J. Educ. 19, 26 (2005).
75. Spring, *supra* note 36, at 5-6; Robert Rothman, Measuring Up: Standards, Assessment 41 (1995); Vinovskis, From A Nation At Risk, *supra* note 20, at 124.
76. Chester E. Finn Jr., *Education Policy and the Reagan Administration: A Large but Incomplete Success*, 2 Educ. Pol'y 343, 351 (1988). Finn also points out the importance of education-reform governors at this time.
77. William J. Bennett, James Madison Elementary School: A Curriculum for American Students (August 1988), http://www.pcs.k12.nj.us/educators/james_madison.cfm#introduction. Secretary Bennett made a similar statement that his exemplary high-school curriculum was voluntary, that the federal government may not mandate curriculum,

and that the U.S. Department of Education "is specifically forbidden by statue" from "exercising direction over" or otherwise interfering with curriculum. William J. Bennett, James Madison High School: A Curriculum for American Students (December 1987), http://www.eric.ed.gov/PDFS/ED287854.pdf.

78. Paul E. Peterson, Saving Schools: From Horace Mann to Virtual Learning 164, 178 (2010); *see also id.* at 158; Williamson M. Evers, Letter to the Editor, Wall St. J., Sept 19, 2014, http://www.wsj.com/articles/the-conservative-case-for-education-isnt-common-core-1411073917.

79. On the background to the change to state-by-state NAEP reporting, see Finn, Troublemaker, *supra* note 20, at 136-40; Rothman, Measuring Up, *supra* note 75, at 42, 45.

80. Cross, *supra* note 47, at 83-84; McCluskey, *supra* note 37, at 57; Vinovskis, From A Nation at Risk, *supra* note 20, at 132, 217. It had also previously reported results on a multi-state regional level.

81. Popham points out that, under many circumstances, there are considerations, other than a state desire for an easy performance standard, that result in NAEP-versus-state inconsistency. He maintains that "most" of these considerations are "legitimate." W. James Popham, The Role of Assessment in Federal Education Programs 28 (2008), available at http://www.eric.ed.gov/PDFS/ED503908.pdf. Rothman notes that "state tests and NAEP do not always test the same content." Rothman, Something in Common: The Common Core Standards and the Next Chapter in American Education 48 (2011). Whitehurst speculates that, among other possibilities, "NAEP may be too blunt an instrument to detect the influence of the quality and rigor of [state] standards." Grover J. "Russ" Whitehurst, "Don't Forget Curriculum," Brown Center Letters on Education, no. 3 (October 2009), http://www.brookings.edu/papers/2009/1014_curriculum_whitehurst.aspx, at 7.

82. Chester E. Finn Jr., *Who's Afraid of the Big, Bad Test?*, in Debating the Future of American Education: Do We Need National Standards and Assessments 120, 141 (Diane Ravitch ed., 1995) [hereinafter Finn, Who's Afraid?].

83. The George W. Bush administration addressed this concern – without calling for national standards and tests – by proposing in its blueprint for reauthorizing NCLB that states be required to report proficiency rates for both NAEP and the state test. Margaret Spellings, Building on Results: A Blueprint for Strengthening the No Child Left Behind Act 6 (2007), *available at* http://www2.ed.gov/policy/elsec/leg/nclb/buildingonresults.pdf; *see also* Vinovskis, From A Nation at Risk, *supra* note 20, at 200.

84. Arne Duncan, The Link Between Standards and Innovation: Secretary Arne Duncan's Remarks to the Innovate to Educate Symposium, Richmond, Va., Oct., 27, 2010. [hereafter Duncan, Link] http://www.ed.gov/news/speeches/link-between-standards-and-innovation-secretary-arne-duncans-remarks-innovate-educate-.

85. Excerpts from Secretary Arne Duncan's Remarks at the National Press Club, May 29, 2009, Homeroom web log, June 1, 2009. [hereafter Duncan, Remarks at National Press Club], http://www.ed.gov/blog/2009/06/excepts-from-secretary-arne-duncan%E2%80%99s-remarks-at-the-national-press-club/.

86. Such comparisons were already in fact possible. The National Center for Education Statistics (NCES) compared each state's performance standard for proficiency. NCES put the state performance standards onto a common scale defined in terms of NAEP scores. This process of "state mapping" or equating shows where each state's performance expectations fall on the NAEP scale. Nat'l Ctr. For Educ. Stat., Mapping State Proficiency Standards onto Naep Scales: 2005-2007 (2009), *available at* https://nces.ed.gov/nationsreportcard/pubs/studies/2010456.aspx.

87. Robert J. Samuelson, *The Height of Hypocrisy*, Newsweek, Sept. 22, 1997.

88. Finn, Who's Afraid?, *supra* note 82, at 140; see also Rothman, *supra* note 81, at 31-32; Popham, *supra* note 81, at 11.

89. Rothman, *supra* note 81, at 32.

90. William J. Bennett described the proceedings of the Charlottesville summit as "standard Democratic pap, . . . standard Republican pap, . . . and stuff that rhymes with pap." *Quoted in* McAndrews, *supra* note 51, at 136-37; *see also* McCluskey, *supra* note 37, at 60.

91. Vinovskis, From A Nation at Risk, *supra* note 20, at 25-27, 38; Spring, Conflict Of Interests, *supra* note 36, at 13, 124.

92. Cross, *supra* note 47, at 100; Finn, Troublemaker, *supra* note 20, at 170-72; John F. Jennings, *Title I: Its Legislative History and Its Promise*, in Title I: Compensatory Education at the Crossroads 1, 14-15, 18-19 (Geoffrey D.

Borman at al. eds., 2001); McAndrews, *supra* note 52, at 140; McCluskey, *supra* note 37, at 61; McGuinn, *supra* note 36, at 65; Joel Spring, Political Agendas for Education, From the Religious Right to the Green Party 53, 54 (3d ed. 2005) [hereinafter Spring, Political Agendas]; Vinovskis, From A Nation at Risk, *supra* note 20, at 44-45. On "national competitiveness" as a basis for educational reform in the early 1990s, see Finn, Troublemaker, *supra* note 20, at 187, 189.

93. McGuinn, *supra* note 36, at 65.

94. *Quoted in* McAndrews, *supra* note 52, at 140.

95. Robert Rothman, *Standards and Testing Report Is Hailed, Criticized*, Educ. Week, Feb. 5, 1992, *available at* http://www.edweek.org/ew/articles/1992/02/05/20test.h11.html, *quoted in* Finn, Troublemaker, *supra* note 20, at 178.

96. *Id.*, at 133-34; Chester E. Finn Jr., *This Isn't Only a Test*, Wkly Standard, July 21, 1997, http://www.weeklystandard.com/Content/Protected/Articles/000/000/008/518hwimf.asp [hereinafter Finn, *This Isn't Only a Test*]; McGuinn, *supra* note 36, at 51, 60, 66, 84, 102, 199; Diane Ravitch, *A Historical Perspective on a Historic Piece of Legislation*, in Within Our Reach: How America Can Educate Every Child 35, 41-42 (John E. Chubb ed. 2005) [hereinafter Ravitch, *Historical Perspective*]; McAndrews, *supra* note 52, at 144; Jennings, *supra* note 92, at 25-26, 32; Vinovskis, From A Nation at Risk, *supra* note 20, at 54.

97. John F. Jennings, Why National Standards and Tests? Politics and the Quest for Better Schools 158 (1998).; Vinovskis, From A Nation at Risk, *supra* note 20, at 126.

98. Finn, Troublemaker, *supra* note 20, at 166, 174; Diane Ravitch, Left Back: A Century of Failed School Reforms 433 (2000) [hereinafter Ravitch, Left Back]; Vinovskis, From A Nation at Risk, *supra* note 20, at 126.

99. E-mail letter from Diane Ravitch to Michael Petrilli et al. (May 25, 2011) (discussing "Checker Finn: Plenty of precedent for the feds funding/promoting curriculum—including under Reagan") (on file with author); *see also* Diane Ravitch, National Standards in American Education: A Citizen's Guide at ix-x, 29 (1995) [hereinafter Ravitch, National Standards]. For a discussion of aspirational standards, see Rothman, *supra* note 81, at 15.

100. Finn, Troublemaker, *supra* note 20, at 172; McCluskey, *supra* note 37, at 61.

101. Diane Ravitch, *Adventures in Wonderland: A Scholar in Washington*, Am. Scholar, Autumn 1995, at 497, 513-14.

102. Finn, *This Isn't Only a Test, supra* note 96.

103. Kevin R. Kosar, Failing Grades: The Federal Politics of Education Standards 138 (2005); Ravitch, Left Back, *supra* note 98, at 432; Ravitch, National Standards, *supra* note 99, at 29.

104. Kosar, *supra* note 103, at 136; Vinovskis, From A Nation at Risk, *supra* note 20, at 62.

105. McGuinn, *supra* note 36, at 76, 82; Spring, *supra* note 36, at 435, 444, 448-49.

106. Marc Tucker, Letter to Hillary Clinton, November 11, 1992, in Congressional Record, Sept. 25, 1998 (extension of remarks of Rep. Bob Schaffer), E1819-25. For more on coordinating education with workforce planning during the Clinton administration, see McGuinn, *supra* note 36, at 99, 109; Spring, Political Agendas, *supra* note 92, at 71-75; Vinovskis, From A Nation at Risk, *supra* note 20, at 65.

107. Lynne V. Cheney, *Whose Standards?*, Wall Street J., April 2, 1997 [hereinafter Cheney, *Whose Standards?*].

108. Jennings, *supra* note 92, at 52, 64.

109. Rothman, *supra* note 81, at 41. For example, the Texas math standards for which the NSF systemic initiatives were the contractor and whose writing teams were advised by the National Center for Education and the Economy. These standards were described as "mush" by Governor George W. Bush. Michael McKeown, David Klein & Chris Patterson, *The National Science Foundation Systemic Initiatives: How a Small Amount of Federal Money Promotes Ill-Designed Mathematics and Science Programs in K-12 and Undermines Local Control of Education*, in What's At Stake In The K-12 Standards Wars: A Primer for Policy Makers 313, 350-51 (Sandra Stotsky ed., 2000).

110. McCluskey, *supra* note 37, at 62; McGuinn, *supra* note 36, at 89; Vinovskis, From A Nation at Risk, *supra* note 20, at 52, 73.

111. The panel was later eliminated by Congress. Finn, Troublemaker, *supra* note 20, at 205; Jennings, *supra* note 92, at 159; McGuinn, *supra* note 36, at 102, 109-110, 126; Ravitch, *Historical Perspective, supra* note 96, at 43; Rothman, *supra* note 81, at 39-40; Vinovskis, From A Nation at Risk, *supra* note 20, at 97-99, 109, 115.

112. *Quoted in* McGuinn, *supra* note 36, at 90-91; see also Vinovskis, From A Nation at Risk, *supra* note 20, at 115.

113. McGuinn, *supra* note 36, at 90-92; Vinovskis, From A Nation at Risk, *supra* note 130, at 74. The U.S. Department of Education did not even issue regulations for Goals 2000.

114. McCluskey, *supra* note 37, at 62; McGuinn, *supra* note 36, at 92, 97; Barbara O. Pilling, A Critical Analysis of the Modern Standards Movement: A Historical Portrayal Through Archival Review, Written documents and Oral Testimony from 1983 to 1995, at 79 (April 1999) (Ph.D. dissertation unpublished in print) (on file with author); Vinovskis, From A Nation at Risk, *supra* note 20, at 119.

115. Lamar Alexander & William J. Bennett, Letter, in 140 Cong. Rec. S14164 (1994) (remarks of Sen. Lott), 103d Congress, 2d Sess., Oct. 5, 1994.

116. Popham, *supra* note 81, at 9; Jennings, *supra* note 92, at 149-50; Vinovskis, From A Nation at Risk, *supra* note 20, at 77, 117-18. The required standards and tests in the 1994 reauthorization were resisted by many liberal and conservative members of Congress. See McGuinn, *supra* note 36, at 93, 102. Here, because of the impact on federalism, conservatives who favored curriculum-content standards and tests in and of themselves, opposed them when they were sponsored by the federal government. McGuinn, *supra* note 36, at 94, 197.

117. Alexander & Bennett, *supra* note 115.

118. Popham, *supra* note 81, at 9.

119. Alexander & Bennett, *supra* note 115.

120. Popham, *supra* note 81, at 8; Jennings, *supra* note 92, at 115-15, 141-42, 149. Some requirements that states show improvement in the achievement of the disadvantaged dated back to the 1988 Reagan-era reauthorization of ESEA. The 1994 Clinton-era reauthorization introduced the phrase "annual yearly progress." McCluskey, *supra* note 37, at 57, 78.

121. Popham, *supra* note 81, at 12; McAndrews, *supra* note 52, at 155; McCluskey, *supra* note 37, at 78; McGuinn, *supra* note 36, at 91, 100; Pilling, *supra* note 114, at 79; Vinovskis, From A Nation at Risk, *supra* note 20, at 140.

122. *Quoted in* McGuinn, supra note 36, at 92.

123. Alexander & Bennett, *supra* note 115; see also Vinovskis, From A Nation at Risk, *supra* note 20, at 82-83.

124. Spring, *supra* note 36, at 444. Spring refers to requirement in NCLB that states set standards for all schools and meet those targets. But the crossing of the Rubicon actually occurred earlier, during the Clinton years with federally-required state plans for all schools and all students. See Vinovskis, From A Nation At Risk, *supra* note 20, at 174. On the agreement between Al Gore and George W. Bush during the 2000 campaign that the federal government was responsible for ensuring high-quality schooling for "all children," see McGuinn, *supra* note 36, at 164. Although the change to federal supervision of the education of "all students" came under the Clinton administration, it might well have occurred under George H. W. Bush, if he had been re-elected. The George H. W. Bush-era U.S. Department of Education had a ESEA reauthorization task force during 1991-92, chaired by William Hansen. It recommended that ESEA be changed to "require" that states set high curriculum-content standards for "all students" and "require" that state "curriculum frameworks" and tests be "tied to world-class standards." Vinovskis, From A Nation at Risk, *supra* note 20, at 58.

125. McGuinn, *supra* note 36, at 201. McGuinn also described these developments as "laying the ideational foundation for a new federal education policy regime. *Id*., at 199; *see also* Finn, Troublemaker, *supra* note 20, at 206.

126. Gordon Tullock, Economics of Income Redistribution (1983).

127. *Quoted in* McGuinn, *supra* note 36, at 107. The authors called for a virtually complete federal withdrawal from K-12 education – to be carried out through tax cuts or block grants. In a letter to all U.S. Senator, similar in content to the *National Review* article, Alexander and Bennett wrote that, if there is any federal role remaining, it should be

classroom deregulation, federal experiments in parental choice, and and voluntary national tests "that tell us how the country is doing." Alexander & Bennett, *supra* note 115.

128. Jennifer A. O'Day & Marshall S. Smith, *Systemic Reform and Educational Opportunity*, in Designing Coherent Education Policy: Improving the System 250, 265-69, 300 n.2 (Susan H. Fuhrman ed., 1993); *see also* Finn, Troublemaker, *supra* note 20, at 150-51; Vinovskis, From A Nation at Risk, *supra* note 20, at 58, 68-69.

129. *Quoted in* Jessica Portner, *Curriculum Initiatives Often Seen Occupying Murky Federal Waters*, Educ. Week, June 25, 1995, http://www.edweek.org/ew/articles/1997/06/25/39curric.h16.html.

130. McKeown et al., *supra* note 109, at 315.

131. *Id.* at 332-33, 357-59.

132. *Id.* at 355.

133. McGuinn, *supra* note 36, at 199.

134. Jennings, *supra* note 92, at 182.

135. Pilling, *supra* note 114, at 70; Vinovskis, From A Nation at Risk, *supra* note 20, at 101, 103.

136. McGuinn, *supra* note 36, at 103; Vinovskis, From A Nation at Risk, *supra* note 20, at 87.

137. Vinovskis, From A Nation at Risk, *supra* note 20, at 109; see also Elizabeth H. DeBray, Politics, Ideology, and Education: Federal Policy During the Clinton and Bush Administrations 34 (2006); McGuinn, *supra* note 36, at 103, 106.

138. Marck Pitsch, *Dole Campaign Weighs Options on Education*, Educ. Week, May 1, 1996, 1, 18 http://www.edweek.org/ew/articles/1996/05/01/32dole.h15.html.

139. *Quoted in* McGuinn, *supra* note 36, at 122-23; see also Vinovskis, From A Nation at Risk, *supra* note 20, at 105. The Republican national platform also called for abolishing the U.S. Department of Education.

140. McGuinn, *supra* note 36, at 120, 125; Vinovskis, From A Nation at Risk, *supra* note 20, at 104-105, 109, 124, 130.

141. McAndrews, *supra* note 52, at 159; McGuinn, *supra* note 36, at 125; Jennings, *supra* note 92, at 176-77.

142. McAndrews, *supra* note 52, at 160; Ravitch, *Historical Perspective, supra* note 96, at 41-42; Rothman, *supra* note 81, at 46; DeBray, *supra* note 137, at 35; Vinovskis, From A Nation at Risk, *supra* note 20, at 128, 131, 217-8. Chester Finn said, memorably: "If national testing went down in flames, it would be because those on the right couldn't stand the word 'national,' and those on the left can't abide testing." *National Testing: Prepare for a Battle*, Educ. World, Sept. 15, 1997, *available at* http://www.educationworld.com/a_issues/issues008.shtml, *quoted in* Finn, Troublemaker, *supra* note 20, at 207; *see also* McAndrews, *supra* note 52, at 164; McGuinn, *supra* note 36, at 134. Bruno Manno made a similar comment about national tests proposed by the George H. W. Bush administration, see McGuinn, *supra* note 36, at 68.

143. Chester E. Finn Jr., & Diane Ravitch, *A Yardstick for American Students*, Wash. Post, Feb. 25, 1997, http://www.brookings.edu/opinions/1997/0225education_ravitch.aspx; Chester E. Finn Jr., C for Effort, Nat'l Rev., April 7, 1997; Chester E. Finn Jr., *The Shanker National Education Standards*, Wall Street J., April 9, 1997; Finn, Troublemaker, *supra* note 20, at 207; Diane Ravitch, *National Tests: A Good Idea Going Wrong*, Wash. Post, Aug. 26, 1997 [hereinafter Ravitch, *National Tests*], http://www.brookings.edu/opinions/1997/0826education_ravitch.aspx.

144. Chester E. Finn Jr., Throw These Tests Out of School, original MS version http://208.106.213.194/detail/news.cfm?news_id=77&id=.

145. Ravitch, *National Tests*, *supra* note 143. It is worth noting that just as the Democratic Clinton administration tried to keep control of the tests in the hands of the administration and the Executive (for which Ravitch is criticizing them), the George H. W. Bush administration had likewise originally sought to appoint the (functionally different) test-planning panel (the National Council on Education Standards and Testing) "without any input from Congress." Pilling, *supra* note 114, at 76.

146. Rothman, *supra* note 81, at 46.

147. *Quoted in* DeBray, *supra* note 137, at 35.

148. *Id.*

149. McAndrews, *supra* note 52, at 157. See also Finn, *This Isn't Only a Test, supra* note 95.

150. Tommy G. Thompson, *Leave Standards to the States*, N.Y. Times (Feb. 21, 1997), at A35, *quoted in* Jennings, *supra* note 92, at 177.

151. Ravitch, *National Tests, supra* note 142.

152. Finn, Throw These Tests Out of School, *supra* note 144.

153. Finn, Troublemaker, *supra* note 18, at 208.

154. George W. Bush, Decision Points 274 (2011).

155. Vinovskis, From A Nation at Risk, *supra* note 20, at 156.

156. No Child Left Behind Act of 2001, Pub. Law 107-110, 115 Stat. 1425; *see also* Vinovskis, From A Nation at Risk, *supra* note 20, at 169-70.

157. Barton, *supra* note 74, at 32. But *see* Popham, *supra* note 81, at 4-5, 18 on how the peer-review process can be a "potent way" for federal officials to influence state policy. On Department oversight of state tests under the 1994 reauthorization of ESEA, *see* Vinovskis, From A Nation at Risk, *supra* note 20, at 117-18.

158. Frederick M. Hess, *Why LBJ is Smiling: NCLB and the Bush Legacy in Education*, Am. Enter. Inst. Educ. Outlook, no. 8 (2008), at 5; *see also* Brown & Rocha, *supra* note 111, at 3; McGuinn, *supra* note 36, at 176; Vinovskis, From A Nation at Risk, *supra* note 20, at 173.

159. George W. Bush, A Fresh Start for America: Policy Addresses of George W. Bush 13 (1999) [hereinafter Bush, Fresh Start].

160. Ravitch, *Historical Perspective, supra* note 96, at 50.

161. Williamson M. Evers, Kent Talbert & Robert Eitel, *Education Hornets' Nest: Creating a National K-12 Curriculum*, The Hill's Congress Blog (May 9, 2011), http://thehill.com/blogs/congress-blog/education/159911-education-hornets-nest-us-department-of-education-is-creating-a-national-k-12-curriculum; McCluskey, *supra* note 37, at 80, 83; Michael J. Petrilli, *Hooked on Hysterics: Reading First, Politics Second*, Nat'l Rev. Online, April 19, 2007, http://www.nationalreview.com/articles/220639/hooked-hysterics/michael-j-petrilli; Sol Stern, Too Good to Last: The True Story of Reading First (2008), *available at* http://www.edexcellencemedia.net/publications/2008/200803_toogoodtolast/reading_first_030508.pdf;

Marc Dean Millot, *Fordham Revives Reading First Debate, SFA's Slavin Replies* (Stern Responds), Edbizbuzz Blog (March 11, 2008), http://blogs.edweek.org/edweek/edbizbuzz/2008/03/fordham_revives_reading_first.html; Spring, Political Agendas, *supra* note 92, at 84: Vinovskis, From A Nation at Risk, *supra* note 20, at 179, 231. Compare congressional criticism of teacher-training academies, Ravitch, *Adventures*, *supra* note 101, at 505.

162. Kathleen Kennedy Manzo, *Scathing Report Casts Cloud Over 'Reading First,'* Educ. Week, Oct. 4, 2006; *see also* Kathleen Kennedy Manzo & David J. Hoff, *Federal Influence Over Curriculum Exhibits Growth*, Educ. Week, Feb. 5, 2003, http://www.edweek.org/ew/articles/2003/02/05/21curric.h22.html?qs=manzo+federal+curriculum+no_child_left_behind.

163. *Quoted in* Michele McNeil, *Legislators Oppose National Standards*, Educ. Week, August 15, 2007. *See also* Vinovskis, From A Nation at Risk, *supra* note 20, at 202.

164. Bush, Fresh Start, *supra* note 159, at 34.

165. Patty Reinert, *Education Secretary Defers on Social Agenda*, Houston Chron., Feb. 10, 2005, http://www.chron.com/news/nation-world/article/Education-secretary-defers-on-social-agenda-1552240.php.

166. Eddy Ramirez, *Education Secretary Talks About NCLB*, U.S. News & World Rep., Nov. 5, 2007, http://www.usnews.com/education/articles/2007/11/05/the-education-secretary-talks-about-nclb.

167. Margaret Spellings, *A National Test We Don't Need*, Wash. Post, June 9, 2007, http://www2.ed.gov/news/opeds/edit/2007/06112007.html. On the elevation of curriculum controversies to the national level, see also Barton, *supra* note 74, at 30.

168. Margaret Spellings, Remarks to the Conference on Youth and Education in the Hispanic Community, White House Office of Faith-Based and Community Initiatives, September 24, 2007. http://readingandbeyond.org/awards/index_files/spelling_whitehouse.pdf.

169. Michael J. Petrilli & Chester E. Finn, Jr., To Dream the Impossible Dream: Four Approaches to National Standards and Tests for America's Schools (2006) http://edexcellence.net/publications/dreamtheimpossible.html. See Rothman, *supra* note 81, at 58.

170. Catherine Gewertz, *Common-Standards Watch: Montana Makes 47*, Curriculum Matters Blog (Nov. 4, 2011), http://blogs.edweek.org/edweek/curriculum/2011/11/common-standards_watch_montana.html.

171. Vinovskis, From A Nation at Risk, *supra* note 20, at 116.

172. Joy Pullmann, Mitch Daniels Contradicts Common Core documents He Signed, The Federalist, Apr. 13, 2015, http://thefederalist.com/2015/04/13/mitch-daniels-contradicts-common-core-documents-he-signed/

173. Rothman, *supra* note 81, at 53.

174. *Id.* at 56, 57. A 2008 Achieve report explained the reason for this strategy: "Federal efforts to influence – let alone direct or determine – state standards have met with stiff and effective political resistance." Achieve, Out of Many, One: Toward Rigorous Common Core Standards from the Ground Up (July 2008). http://www.achieve.org/files/CommonCore.pdf.

175. *Id.*; Michael G. Watt, The Common Core State Standards Initiative 84 (2011), *available at* http://www.eric.ed.gov/PDFS/ED490562.pdf.

176. Both the NGA and CCSSO have received substantial funds from the federal government. See Joy Pullmann, 'State-Led' Common Core Pushed by Federally Funded Nonprofit, http://news.heartland.org/newspaper-article/2013/04/24/state-led-common-core-pushed-federally-funded-nonprofit; Joy Pullmann, Tax–Sponsored Common Core Meetings Closed to Public, http://news.heartland.org/newspaper-article/2013/01/03/tax-sponsored-common-core-meetings-closed-public.

177. Wilhoit is contrasting the testing consortia, which he considers led by the states, with activities "organized through CCSSO and NGA." Gene Wilhoit, Opening Remarks, Kentucky Association of School Superintendents, Feb. 4, 2011, slide 20. http://www.kysupts.org/wp-content/KY_Superintendents_Network_Common_Core_February_2011.ppt#536,20,Slide 20.

178. Rothman, *supra* note 81, at 62; Watt, *supra* note 175, at 84.

179. About Achieve, Achieve web site. http://www.achieve.org/AboutAchieve; see also Pilling, *supra* note 113, at 70; Vinovskis, From A Nation At Risk, *supra* note 20, at 133-34.

180. Millicent Lawton, *NGA Approves Group to Aid in Standards-Setting Efforts*, Educ. Week, May 29, 1996; Millicent Lawton, *Governors OK 'Entity' to Oversee Standards*, Educ. Week, Aug. 7, 1996. Ban on work on national standards, quoted in *id.*, at 103.

181. Watt, *supra* note 175, at 7.

182. Achieve and the American Diploma Project, American Youth Policy Forum web site, http://www.aypf.org/tripreports/2011/documents/AboutAchieve-Feb2011.pdf, *quoted in* Peter Wood, The Core Between the States, Innovations web log, Chronicle of Higher Educ., May 23, 2001, http://chronicle.com/blogs/innovations/the-core-between-the-states/29511; *see also* Rothman, *supra* note 81, at 59-60; Watt, *supra* note 175, at 7-8, 84-85.

183. Finn, Troublemaker, *supra* note 20, at 249.

184. Nat'l Governors Ass'n, Council of Chief State School Officers & Achieve, Inc., Benchmarking For Success: Ensuring U.S. Students Receive a World-Class Education 16, 37 (2008). I am indebted to Emmett McGroarty for this reference.

185. *Id.*, at 6-7.

186. *Id.*, at 5.

187. Rothman, *supra* note 81, at 63; Watt, *supra* note 175, at 85.

188. Michael Greve, The Upside-Down Constitution 178, 186 (2012).

189. *See* Chester E. Finn Jr. & Michael J. Petrilli, *Foreword* to John Cronin Et. Al., The Proficiency Illusion 4 (2007).

190. Duncan, Remarks at National Press Club, *supra* note 85.

191. Ravitch, *Adventures, supra* note 101, at 499.

192. Elaine McArdle, *What Happened to the Common Core?*, Harvard Ed. Magazine, Fall 2014, http://www.gse.harvard.edu/news/ed/14/09/what-happened-common-core.

193. Robert Scott, Letter to U.S. Sen. John Cornyn, Nov. 25, 2009, *available at* http://www.edweek.org/media/common_core_standards_letter.pdf, *quoted, in part, in* Lance Izumi, Obama's Education Takeover 7-8 (2012).

194. Duncan, Link, *supra* note 84.

195. *Id.*

196. Secretary Arne Duncan, *Nine States and the District of Columbia Win Second Round Race to the Top Grants*, The White House Blog (Aug. 24, 2010, 1:52 PM), https://www.whitehouse.gov/blog/2010/08/24/nine-states-and-district-columbia-win-second-round-race-top-grants.

197. Joseph P. Viteritti, *The Federal Role in School Reform: Obama's Race to the Top*, 87 Notre Dame L. Rev. 2087, 2103 (2013).

198. Grover J. Whitehurst, *Did Congress Authorize Race to the Top?*, Educ. Week, April 27, 2010, *available at* http://www.brookings.edu/opinions/2010/0427_education_whitehurst.aspx, *quoted in* Izumi, *supra* note 193, at 26-27.

199. Greve, *supra* note 188, at 257.

200. *Id.* at 247-49, 254, 381-83.

201. John Fensterwald reported: "[Common Core math standards co-writer William MCullum] offered a mea culpa on the deadlines. A normal timetable for standards adoption would go through multiple iterations, with pilot testing. The compressed schedule was set by "his bosses," the National Governors Association Center for Best Practices and the Council of Chief State School Officers, which are leading the standards initiative. And they, in turn, have been pressed by Secretary of Education Arne Duncan, who has used the possibility of getting Race to the Top money as leverage to force states to commit now to adopting uniform standards." Fensterwald, *Common Core Standards Under Fire*, Thoughts on Public Education Blog (Jan. 17, 2010), http://toped.svefoundation.org/2010/01/17/common-core-standards-under-fire/.

202. Finn, *This Isn't Only a Test, supra* note 96.

203. "Race to the Top Fund—Awards," U.S. Department of Education, June 10, 2013, http://www2.ed.gov/programs/racetothetop/awards.html.

204. Rothman, *supra* note 81, at 72. The states had to adopt the national standards in order to get a competitive score on their applications for the U.S. Department of Education's Race to the Top funds.

205. Rothman, *supra* note 81, at 71-72, 101-102.

206. Spring, Political Agendas, *supra* note 92, at 66.

207. State of California, Race to the Top Application for Initial Funding, CFDA Number: 84.395A, at 7, 37, 39 (January 19, 2010) http://www2.ed.gov/programs/racetothetop/phase1-applications/california.pdf. For discussion of similar revealing language in the Massachusetts application, see James Stergios, MA Finished 13th Out of 16 in the Race to the Top: Why?, Rock The Schoolhouse Blog, May. 13, 2010, http://www.boston.com/community/blogs/rock_the_schoolhouse/2010/05/ma_finished_13th_out_of_16_on.html.

208. Michael B. Henderson, Paul E. Peterson, and Martin R. West, No Common Opinion on The Common Core, Educ. Next, Winter 2015: 17.

209. Lyndsey Layton, How Bill Gates Pulled off the Swift Common Core Revolution, Wash. Post, June 7, 2014, http://www.washingtonpost.com/politics/how-bill-gates-pulled-off-the-swift-common-core-revolution/2014/06/07/a830e32e-ec34-11e3-9f5c-9075d5508f0a_story.html.

210. Appendix B, Reviewer Guidance Specific to (B)(2)(ii) – Significant Number of States http://www.federalregister.gov/articles/2010/04/14/2010-8376/overview-information-race-to-the-top-fund-notice-inviting-applications-for-new-awards-for-fiscal. I am indebted to Ze'ev Wurman for this point.

211. To put this disadvantage in perspective, adopting Common Core gave a state 50 points out of 500 possible total points. In round one of RttT, the difference in score between the first place winner and the highest scoring non-winner was only 21 points. In round two of RttT this difference was only 32.3 points. Both are significantly lower than the 50 points Common Core advantage.

212. U.S. Department of Education, Transcript of Race to the Top Technical Assistance Planning Workshop for the States in Denver, Colorado, 2009: 190-202. http://www2.ed.gov/programs/racetothetop/ta-workshop-transcript-200912.pdf.

213. Skinner & Feder, *supra* note 22 at CRS-13. One should also note the effective impossibility of having two consortia each with a "majority of the States" to score full points on this criterion.

214. Ricki Morrell, Massachusetts Wonders if Race to the Top Is Worth Winning, Hechinger Report, June 1, 2010 http://hechingerreport.org/massachusetts-wonders-if-race-to-the-top-is-worth-winning/; James Stergios, *Red Light on the State's Race for Federal Money*, Rock The Schoolhouse Blog (Aug. 9, 2010), http://www.boston.com/community/blogs/rock_the_schoolhouse/2010/08/red_light_on_the_states_race_f.html.

 Concerning the quality of the curriculum-content standards in Massachusetts, Liam Julian wrote in 2009: "Several states have actually managed to craft admirable standards, among them California, Indiana, and Massachusetts; and several others are revising standards that badly need it. Will these states be compelled to jettison the results of their fine work and remake their curricula and assessments to jibe with 'voluntary' national standards?" Liam Julian, *Against National Standards*, Wkly Standard, Aug. 10, 2009, https://www.weeklystandard.com/Content/Public/Articles/000/000/016/795coxmj.asp.

215. Frederick Hess, *Can the Common Core Coalition Keep Its Finlandophiles in Check?* Rick Hess Straight Up Blog, Apr. 5, 2011, http://blogs.edweek.org/edweek/rick_hess_straight_up/2011/04/can_the_common_core_coalition_keeps_its_finlandophiles_in_check.html.

216. A 2006 Fordham study called this the "Let's All Hold Hands" strategy, in which "states band together to create common standards and tests." Petrilli & Finn, *supra* note 169; *see also* Kathleen Kennedy Manzo, *Fordham Pushes National Standards*, Educ. Wk. Sept. 6, 2006, http://www.edweek.org/ew/articles/2006/09/06/02fordham.h26.html; Rothman, *supra* note 81, at 58.

217. Chester E. Finn Jr., *Back to Basics: Are "Common Standards" Good for American Education?*, Nat'l Rev. Online, Mar. 16, 2010, http://www.nationalreview.com/articles/229317/back-basics/chester-e-finn-jr; *see also* Chester E. Finn Jr. & Michael E. Petrilli, *Let's Talk Education Reform: A GOP candidate's speech*, Educ. Next Blog (July 12, 2011), http://educationnext.org/let%E2%80%99s-talk-education-reform-a-gop-candidate%E2%80%99s-speech/.

218. Barton, *supra* note 74, at 28.

219. Chester E. Finn Jr., We Must Take Charge: Our Schools and Our Future 265 (1991).

220. Finn, *This Isn't Only a Test, supra* note 96.

221. Glenn Cook, *Standards = Funding: The Emerging Debate*, AM. SCH. BD. J., Apr. 2010, at 10.

222. McGuinn, *supra* note 36, at 185.

223. Neal McCluskey, *By "No Federal Control," We Mean "Yes, Federal Control*," Cato@Liberty Web Log (May 13, 2011), http://www.cato-at-liberty.org/by-no-federal-control-we-mean-yes-federal-control/.

224. Anne L. Bryant, NSBA Raises Concerns [Over] Tying Title I Funding to Standards Development, February 22, 2010. http://us.vocuspr.com/Newsroom/Query.aspx?SiteName=NSBANew&Entity=PRAsset&SF_PRAsset_PRAssetID_EQ=113119&XSL=PressRelease&Cache=False.

225. On the necessity of federal policing of state cartels, Michael Greve writes: "State 'cooperation' and cartels will often founder on state disagreements, or subsequently, on defection or cheating by individual states. Blocking such maneuvers requires central intervention by the federal government." Greve, *supra* note 188, at 184.

226. *S.C. Gov. Nikki Haley Backs Bill to Block Common Core Standards*, Educ. News (Feb. 25, 2012), http://www.educationnews.org/education-policy-and-politics/sc-gov-nikki-haley-backs-bill-to-block-common-core-standards/.

227. Greve, *supra* note 188, at 197, 395.

228. Richard B. McKenzie & Robert J. Staaf, *Revenue Sharing and Monopoly Government*, Pub. Choice (Apr. 1978), at 93-97.

229. Richard A. Epstein & Mario Loyola, *By the Roots*, Nat'l Rev., July 30, 2012, at 15-17.

230. Perdue was governor of Georgia from 2003 to 2011. There were preliminary meetings on national standards beginning in 2006. The Common Core initiative was formally launched in 2009. The Common Core national standards themselves were released in 2010. The news conference announcing the release was held at Peachtree Ridge High School in Suwanee, Georgia, to give recognition to Perdue's central role. He was at the time, co-chair of the Center for Best Practices of the National Governors Association. The center developed the Common Core standards together with the Council of Chief State School Officers.

231. Dane Linn, *The Role of Governors*, in Common Core Meets Education Reform: What It All Means for Politics, Policy, and the Future of Schooling 39 (Frederick M. Hess & Michael Q. McShane eds., 2013). The Georgia Public Policy Foundation writes: "Common Core … brought at least 37 state standards into close alignment with Georgia. This critical mass means tests, textbooks and other instructional materials are now likely to be more closely aligned with Georgia's standards." See Georgia Public Policy Foundation, Background and Analysis of the Common Core State Standards As They Relate to Georgia 12 (2013); *see also* Bill Crane, *Sonny Perdue's Non-Legacy*, Georgia Trend, January 2011, http://www.georgiatrend.com/January-2011/Georgia-View-Sonny-Perdues-Non-Legacy/; Reid Wilson, *The Republican Case for Common Core*, Govbeat (Wash. Po. Web Log), Aug. 23, 2013, http://www.washingtonpost.com/blogs/govbeat/wp/2013/08/23/the-republican-case-for-common-core/.

For an evaluation showing the similar level of academic expectations in Common Core and in the pre-Common Core Georgia state standards, see Sheila Byrd Carmichael, Gabrielle Martino, Kathleen Porter-Magee & W. Stephen Wilson, The State of State Standards — & the Common Core — in 2010, Washington, D.C.: Thomas B. Fordham Institute, 2010, pp. 95-100, http://edex.s3-us-west-2.amazonaws.com/publication/pdfs/SOSSandCC2010_FullReportFINAL_8.pdf. For example, the authors write: "With some minor differences, Common Core and Georgia both cover the essential [mathematics] content. …" p. 100.

During 2009-2011, Georgia had the lowest expectations of student performance on state tests of any state in the country. Paul E. Peterson & Peter Kaplan, *Despite Common Core, States Still Lack Common Standards*, Educ. Next (Fall 2013), at 49, http://educationnext.org/despite-common-core-states-still-lack-common-standards/.

232. Grover Norquist, president of Americans for Tax Reform, said, "The genius of America is to have the fifty states compete to provide the best government at the lowest cost. The NGA is fighting to establish a cartel in order to avoid competition which would lead to better, less expensive government." *Quoted in* John Kartch, "In Push for Internet Sales Tax, NGA Accuses Its Chairman of Presiding Over a 'Tax Haven,'" Americans for Tax Reform (news release), April 26, 2013.

Richard A. Epstein and Mario Loyola write: "Officials in regulation-heavy and tax-heavy states have an enormous incentive to collude with their fellows in other states to form coalitions … aimed at imposing a high level of regulation and taxation on everyone. … [Cooperative federalism] is biased in favor of producing the highest level of overall government control and economic extraction that is politically sustainable – exactly the opposite of the competitive federalism of the original Constitution." Nat'l Affairs (Summer 2014), at 16.

233. On the importance of prioritizing standards in creating tests, see Popham, *supra* note 81, at 24. I was reminded of this point, which is embodied in test blueprints, by Ze'ev Wurman.

234. Richard Innes, *How's that? Create tests without looking at curriculum?*, Bluegrass Institute Blog (February 2011), http://bluegrasspolicy-blog.blogspot.com/2011/02/hows-that-create-tests-without-looking.html.

235. Rothman, *supra* note 81, at 34; *see also* Pilling, *supra* note 114, at 82.

236. Roy Romer, in Alliance for Excellent Education briefing on Something in Common, October 18, 2011, video at 69.03-70.21 minutes. http://media.all4ed.org/briefing-oct-18-2011

237. Finn, *This Isn't Only a Test, supra* note 96.

238. Rothman, *supra* note 81, at 28.

239. Skinner & Feder, *supra* note 22 at CRS-16.

240. Lauren B. Resnick, May Kay Stein, & Sarah Coon, *Standards-Based Reform: A Powerful Idea Unmoored*, in Improving No Child Left Behind: Getting Education Reform Back on Track 103, 131-32 (Richard D. Kahlenberg ed., 2008); Hoff, *supra* note 36.

241. "To apply the logic of learning sequence measurement, therefore, will inevitably implicate curriculum. … [W]e will need to stop pretending that curriculum is totally off limits to standards-setting." Resnick et al., *supra* note 240, at 134.

242. Catherine Gewertz, *Common-Assessment Consortia Add Resources to Plans: Extra Federal Funds Will Go Toward Curricula, Teacher Training*, Educ. Week, Feb. 23, 2011, http://www.edweek.org/ew/articles/2011/02/11/21consortia.h30.html.

243. Skinner & Feder, *supra* note 22.

244. Cooperative Agreement between the U.S. Department of Education and the Smarter Balanced Assessment Consortium and the State of Washington (Fiscal Agent) (Jan. 7, 2011), at 4, http://www2.ed.gov/programs/racetothetop-assessment/sbac-cooperative-agreement.pdf.

245. "Performance—Race to the Top Technical Review," U.S. Department of Education, March 2013, http://www2.ed.gov/programs/racetothetop-assessment/performance.html; for further information on the duties of the Technical Review Board, *see* U.S. Dep't of Educ., Race to the Top Assessment Program: Technical Review Process (2013), http://www2.ed.gov/programs/racetothetop-assessment/technical-review-process.pdf.

246. Lynnette Guastaferro, *A Conversation with Linda Darling-Hammond*, Teaching Matters Blog (October 19, 2011), http://www.teachingmatters.org/blog/conversation-linda-darling-hammond.

247. Amy Scott, With Common Core Testing, You Get What You Pay For, Marketplace Blog, Feb. 9, 2015, http://www.marketplace.org/topics/education/learningcurve/common-core-testing-you-get-what-you-pay.

248. Whitehurst *supra* note 81; Neal McCluskey, "Behind the Curtain: Assessing the Case for National Curriculum Standards," Cato Institute Policy Analysis no. 661 (February 17, 2010), http://www.cato.org/pub_display.php?pub_id=11217.

249. For example, U.S. Secretary of Education Arne Duncan said: "What we have had as a country, I'm convinced, is what we call a race to the bottom. We have 50 different standards, 50 different goal posts. And due to political pressure, those have been dumbed down. We want to fundamentally reverse that. We want common, career-ready internationally benchmarked standards." Arne Duncan, Remarks at the National Press Club, May 29, 2009, http://www.ed.gov/blog/2009/06/excepts-from-secretary-arne-duncan%E2%80%99s-remarks-at-the-national-press-club/. *See also* Cindy Brown & Elena Rocha, The Case for National Standards 1 (2005); Vinovskis, From A Nation at Risk, *supra* note 20, at 219.

250. For criticism of the supposed natural dynamic of a "race to the bottom" in policy fields other than education, see John Frerejohn & Barry R. Weingast, eds., New Federalism: Can the States Be Trusted? (1997); Richard A. Epstein, *Exit Rights under Federalism*, 55 Law & Contemp. Probs. 1, 152-65 (1992). On corporate charters, see Ralph K. Winter Jr., Government and the Corporation (1978); Daniel R. Fischel, *The 'Race to the Bottom' Revisited: Recent Developments in Delaware Corporation Law*, 76 Nw. U. L. Rev. 913, 913-44 (1982); Peter Dodd & Richard Leftwich, *The Market for Corporate Charters: "Unhealthy Competition" versus Federal Regulation*, 53 J. Bus. 259, 259-83 (1980).

On poor relief, see Thomas R. Dye, American Federalism: Competition among Governments (1990), at 17-18; Craig Volden, *The Politics of Competitive Federalism: A Race to the Bottom in Welfare Benefits?* 46 Am. J. Pol. Sci. 352 (2002). On conservation and environmental policy, see Jonathan H. Adler, *Interstate Competition and the Race to the Top*, 35 Harv. J.L. & Pub. Pol'y, 89, 96-97 (2012); Scott R. Saleska & Kirsten H. Engel, *"Facts Are Stubborn Things": An Empirical Reality Check in the Theoretical Debate Over the Race-to-the-Bottom in State Environmental Standard-Setting,"* 8 Cornell J.L. & Pub. Pol'y 55, 55-86 (1998). Competitive federalism played a role in state suffrage

policies and state provision of K-12 education, see Elisha Mariscal & Kenneth L. Sokoloff, *Schooling, Suffrage, and the Persistence of Inequality in the Americas*, in Political Institutions and Economic Growth In Latin America: Essays in Policy, History and Political Economy (Stephen Haber, ed., 2000), at 159. By giving these examples, I am not endorsing the resulting policies, but rather am pointing to evidence that refutes the claim of a race to the bottom through interstate competition under federalism. For an economic history of the beginnings of public provision of K-12 education, see E.G. West, *The Political Economy of American Public School Legislation*, 10 J. Law & Econ. 101 (1967).

251. *See* Finn & Petrilli, *supra* note 189.

252. Greve, *supra* note 188; Thomas R. Dye, American Federalism: Competition among Governments (1990); Dye, *supra* note 250; George Thomas, The Madisonian Constitution (2008). For an analysis of Common Core in terms of competitive federalism, see Williamson M. Evers, *Against the Common Core*, Defining Ideas: A Hoover Institution Journal, Sept. 4, 2014, http://www.hoover.org/research/against-common-core.

253. Charles M. Tiebout, *A Pure Theory of Local Expenditure*, J. Pol. Econ., Oct. 1956, at 416-24; George J. Stigler, *The Tenable Range of Functions of Local Government*, in Joint Econ. Comm., Federal Expenditure Policy for Economic Growth and Stability 213-19 (1957); Randall G. Holcombe, *Federal Systems*, in The Elgar Companion to Public Choice 179-94 (Michael Reksulak et al., eds., 2d ed. 2013); Vincent Ostrom, The Meaning of American Federalism: Constituting a Self-Governing Society (1991).

254. Caroline M. Hoxby, *Does Competition among Public Schools Benefit Students and Taxpayers?*, Am. Econ. Rev., Dec. 2000, at 120938. For earlier literature on this topic, *see* Richard E. Wagner & Warren E. Weber, *Competition, Monopoly and the Organization of Government in Metropolitan Areas*, J. L. & Econ., Dec. 1975, at 661-684; Melvin V. Borland & Roy M. Howsen, *Student Academic Achievement and the Degree of Market Concentration in Education*, Econ. Educ. Rev., 1992, at 31-39; Melvin V. Borland & Roy M. Howsen, *On the Determination of the Critical Level of Market Concentration in Education*, Econ. Educ. Rev., 1993, at 166-69; Blair R. Zanzig, *Measuring the Impact of Competition in Local Government Education Markets on the Cognitive Achievements of Students*, Econ. Educ. Rev., 1997, at 431-41; *see also* Katie Ann Showman, Essays in the Economics of Education, Ph.D. Diss., University of Florida, 2009 (on file with author).

255. Jim Stergios & Charles Chieppo, *Massachusetts Does It Better: How Washington Is Undermining the Bay State's High Education Standards*, Wall St. J., Apr. 3, 2010; James Stergios et al., *The Massachusetts Exception*, The City J., Summer 2012; Charles Chieppo & Jamie Gass, *Report: Worse than Stagnant*, Worcester (Mass.) Telegram & Gazette, Dec. 11, 2014.

256. *See* Finn & Petrilli, *supra* note 189; Michael Dahlin et al., Thomas B. Fordham Inst., The Proficiency Illusion 4 (October 2007) http://www.edexcellence.net/publications/theproficiencyillusion.html. This study and a 2009 Fordham study, "The Accountability Illusion," stressed that this variety of performance standards (that would be expected in a federal system) meant that a school that was deemed to be doing well in Mississippi would probably not be deemed to be doing well in Massachusetts. In 1997, the Clinton administration made equivalent claims of a race to the bottom in its time. *See* Jennings, Why National Standards and Tests?, *supra* note 97 at 177-78.

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